

09:26AM

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 **UNITED STATES OF AMERICA,**

4 Plaintiff,
5 v.
6 Case No. 1:19-cr-227
7 1:23-cr-37
8 (LJV)

9 **PETER GERACE, JR.,**

10 December 18, 2024

11 Defendant.

12 **TRANSCRIPT EXCERPT - EXAMINATION OF BRIAN BURNS - DAY 3
13 BEFORE THE HONORABLE LAWRENCE J. VILARDO
14 UNITED STATES DISTRICT JUDGE**

15 **APPEARANCES:** **TRINI E. ROSS, UNITED STATES ATTORNEY**

16 **BY: JOSEPH M. TRIPPI, ESQ.**

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And

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For the Defendant

29 **PRESENT:**

30 **KAREN A. CHAMPOUX, USA PARALEGAL**
31 **BRIAN A. BURNS, FBI SPECIAL AGENT**
32 **MARILYN K. HALLIDAY, HSI SPECIAL AGENT**
33 **OLIVIA A. PROIA, J.D., PARALEGAL**

34 **LAW CLERK:**

35 **REBECCA FABIAN IZZO, ESQ.**

36 **COURT CLERK:**

37 **COLLEEN M. DEMMA**

38 **REPORTER:**

39 **ANN MEISSNER SAWYER, FCRR, RPR, CRR**
Robert H. Jackson Courthouse
2 Niagara Square Buffalo, New York 14202
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09:40AM

09:40AM 1 (Excerpt commenced at 9:40 a.m.)
09:40AM 2 (Jury seated at 9:40 a.m.)
09:40AM 3 **THE COURT:** Good morning, everyone.
09:40AM 4 **THE JURORS:** Good morning.
09:40AM 5 **THE COURT:** I think the Christmas sweaters look
09:40AM 6 lovely, which is probably why they make me wear black every
09:40AM 7 day. The record will reflect that all our jurors are present.
09:40AM 8 I remind the witness that he's still under oath.
09:40AM 9 And, Mr. Foti, you may continue.
09:40AM 10 **MR. FOTI:** Thank you. All right. Can we just -- at
09:40AM 11 this time, can we just, for just the witness, can we pull up
09:40AM 12 Government Exhibit 3539ED as in dog? And can we go to page 2.
09:40AM 13
09:40AM 14 **B R I A N B U R N S,** having been previously duly called and
09:40AM 15 sworn, continued to testify as follows:
09:41AM 16
09:41AM 17 **(CONT'D) CROSS-EXAMINATION BY MR. FOTI:**
09:41AM 18 Q. Good morning, Special Agent Burns.
09:41AM 19 A. Good morning, Mr. Foti.
09:41AM 20 Q. You didn't talk to anybody about your testimony during
09:41AM 21 the evening break, correct?
09:41AM 22 A. No, it was very quiet and peaceful. Home early.
09:41AM 23 Q. Okay. So where we left off, I was asking you yesterday
09:41AM 24 about some of the content of a report that was prepared based
09:41AM 25 on the review of the DVR, correct?

09:41AM 1 A. Correct. That I -- I didn't prepare, did you say you --
09:41AM 2 Q. No. A report that was prepared.
09:41AM 3 A. Oh, okay. Certainly.
09:41AM 4 Q. And I think that was established yesterday, you're not
09:41AM 5 the one who prepared the --
09:41AM 6 A. Correct.
09:41AM 7 Q. -- report.
09:41AM 8 You are familiar with the fact that these reports were
09:41AM 9 prepared as part of the investigation, correct?
09:41AM 10 A. Yes, I am.
09:41AM 11 Q. And you were familiar with what was contained in the
09:41AM 12 court -- in the reports related to efforts to review the DVR
09:41AM 13 footage, correct?
09:41AM 14 A. That's -- that's correct.
09:42AM 15 Q. And we're talking about, just to kind of circle back to
09:42AM 16 yesterday, we're talking about DVR footage that was seized
09:42AM 17 during the search of Pharaoh's on December 12th of 2019,
09:42AM 18 correct?
09:42AM 19 A. That's correct.
09:42AM 20 Q. Okay. Now, up on your screen, right now the jury can't
09:42AM 21 see this, but this is the report that I was asking you about
09:42AM 22 in regard to DVR 1, correct?
09:42AM 23 A. Correct.
09:42AM 24 Q. And just to again kind of remind the jury of what we
09:42AM 25 discussed yesterday, there were three DVRs that were seized

09:42AM 1 from Pharaoh's during the search, correct?

09:42AM 2 A. That's correct.

09:42AM 3 Q. And they were labeled -- for organization purposes, they
09:42AM 4 were labeled DVR 1, 2, and 3, right?

09:42AM 5 A. That's correct.

09:42AM 6 Q. Okay. And what we had talked about yesterday and what's
09:42AM 7 on the screen right now is all related to DVR 1, correct?

09:42AM 8 A. That's accurate.

09:42AM 9 Q. Okay. Now, this is the DVR that you had testified on
09:42AM 10 direct covers basically a seven-week span, right?

09:42AM 11 A. That's correct.

09:42AM 12 Q. And we talked about that a little bit yesterday, that
09:42AM 13 it -- the recordings appear to begin on October 21st of 2019,
09:42AM 14 right?

09:43AM 15 A. That's correct.

09:43AM 16 Q. Okay. Now, at this time, and this is the report that
09:43AM 17 was -- this is the same report that we were talking about
09:43AM 18 yesterday and that you reviewed as part of the investigation
09:43AM 19 related to DVR 1, correct?

09:43AM 20 A. That's correct.

09:43AM 21 Q. This report is the same or substantially same condition
09:43AM 22 as -- as any -- any prior time that you reviewed the report
09:43AM 23 as part of the investigation, correct?

09:43AM 24 A. Yeah. It's an accurate representation of this report.

25

09:43AM 1 **MR. FOTI:** Okay. Judge, at this time, I would move
09:43AM 2 Government Exhibit 3539ED into evidence.

09:43AM 3 **MR. TRIPI:** No objection.

09:43AM 4 **THE COURT:** Received without objection.

09:43AM 5 **(GOV Exhibit 3539ED was received in evidence.)**

09:43AM 6 **MR. FOTI:** All right. So if we can publish for the
09:43AM 7 jury what's on the screen.

09:43AM 8 **THE CLERK:** You're all set.

09:43AM 9 **MR. FOTI:** Okay. Thank you.

09:43AM 10 **BY MR. FOTI:**

09:43AM 11 Q. Yesterday I was asking you questions about this, and you
09:43AM 12 were kind of referring to the document. We're going to go
09:43AM 13 through it with -- in front of the jury so they can see what
09:43AM 14 you're seeing, okay?

09:43AM 15 A. Yeah, that will be helpful.

09:44AM 16 Q. Okay. We talked about what -- what's on this page of the
09:44AM 17 report is reference to the three of the cameras that are in
09:44AM 18 DVR 1, correct?

09:44AM 19 A. That's correct.

09:44AM 20 Q. Okay. And I'm just going to briefly circle paragraph
09:44AM 21 here to sort of start.

09:44AM 22 This is the paragraph I was talking about, that talks
09:44AM 23 about there being six different camera angles inside the
09:44AM 24 VIP Room, correct?

09:44AM 25 A. That's correct.

09:44AM 1 Q. One camera angle of the stage, correct?

09:44AM 2 A. Correct.

09:44AM 3 Q. And then as you testified to today, there's one camera
09:44AM 4 that just doesn't have any video, right?

09:44AM 5 A. That's accurate.

09:44AM 6 Q. Okay. And this is -- this paragraph documents the
09:44AM 7 specific times of the recordings that we talked about going
09:44AM 8 from October 21st, 2019, up until December 11th or 12th of
09:44AM 9 2019, correct?

09:44AM 10 A. That is correct.

09:44AM 11 Q. Okay. As this paragraph notes at the end, a review was
09:44AM 12 conducted of the video, and then the summary of each camera
09:44AM 13 is provided below, correct?

09:45AM 14 A. That's accurate.

09:45AM 15 Q. All right. Okay. Now, camera 1 is -- and I was asking
09:45AM 16 this -- about this yesterday, but this is video footage from
09:45AM 17 a room sectioned off by three areas that each have a brown
09:45AM 18 loveseat-style couch, correct?

09:45AM 19 A. That's correct.

09:45AM 20 Q. Okay. And as far as you know, each one of the couches
09:45AM 21 that are contained in the VIP Room are visible throughout
09:45AM 22 these different cameras, correct?

09:45AM 23 A. Based on the report, that's what it appears.

09:45AM 24 Q. Okay. Now, camera 1, the determination from the review
09:45AM 25 of the agent was that it contained no relevant information,

09:45AM 1 correct?

09:45AM 2 A. There's a summary of it, and there is a line in there
09:45AM 3 that says camera 1 contains no relevant information.

09:45AM 4 Q. Right. And we'll go through the summary in a moment.

09:46AM 5 But before the summary is provided in the report, the
09:46AM 6 determination is provided that the agent didn't find any
09:46AM 7 information based on her review, correct?

09:46AM 8 A. Based on the review.

09:46AM 9 Q. And I'm going to circle the paragraph.

09:46AM 10 Now, what the -- what the camera 1 shows generally is
09:46AM 11 customers coming in and engaging in -- and dancers engaging
09:46AM 12 in lap dances, correct?

09:46AM 13 A. That's correct.

09:46AM 14 Q. Okay. And this paragraph goes on to describe at least
09:46AM 15 many of the lap dances that are viewed on camera 1, right?

09:46AM 16 A. Correct.

09:46AM 17 Q. So this indicates that in most cases, the clothing stays,
09:46AM 18 the bottom garments stay on, but on a few occasions the
09:46AM 19 dancers would take off their bottom garments, correct?

09:46AM 20 A. That's correct.

09:46AM 21 Q. That -- that there's nothing in here indicating that any
09:46AM 22 patrons or customers ever took their pants off, correct?

09:46AM 23 A. That's correct.

09:46AM 24 Q. It indicates that the dancer would straddle the male's
09:47AM 25 lap and grind her genitals on the male's lap, correct?

09:47AM 1 A. That's correct.

09:47AM 2 Q. It indicates that at least in some of the clips there was
09:47AM 3 an observation that the male appeared to be erect, have an
09:47AM 4 erection, correct?

09:47AM 5 A. That's what the report states.

09:47AM 6 Q. Okay. That there's some discussion of how the dance
09:47AM 7 would continue, that the dancer would turn around, grind her
09:47AM 8 buttocks on the male's lap, correct?

09:47AM 9 A. That's correct.

09:47AM 10 Q. That she would occasionally do the same with her breasts,
09:47AM 11 correct?

09:47AM 12 A. That's correct.

09:47AM 13 Q. And in some clips, you can actually see the customers and
09:47AM 14 the dancers kissing at some point, correct?

09:47AM 15 A. That's correct.

09:47AM 16 Q. That there would occasionally be some contact where the
09:47AM 17 males would fondle the dancer's breasts or other parts of
09:47AM 18 their body, correct?

09:47AM 19 A. That's correct.

09:47AM 20 Q. And when a dance concludes, it would appear that, at
09:47AM 21 least in most instances, the male would give the dancer
09:47AM 22 money, correct?

09:47AM 23 A. That's correct.

09:47AM 24 Q. And your understanding, based on the testimony of this
09:47AM 25 trial and based on the investigation, is that if the customer

09:48AM 1 was giving the dancer money at that point, it was in regard
09:48AM 2 to tips, correct?

09:48AM 3 A. If it was cash, yes. If it wasn't the chips, it was
09:48AM 4 cash, it would be a tip.

09:48AM 5 Q. This describes sort of what is referred to as generally
09:48AM 6 the lap dances that would occur in these clips on camera 1,
09:48AM 7 correct?

09:48AM 8 A. Correct.

09:48AM 9 Q. What is not described anywhere is an observation of any
09:48AM 10 type of, in camera 1, there was no observation ever made of
09:48AM 11 any vaginal sex, correct?

09:48AM 12 A. Correct.

09:48AM 13 Q. In camera 1, there was no observation ever made of any
09:48AM 14 anal sex, correct?

09:48AM 15 A. Correct.

09:48AM 16 Q. In camera 1, there was no observation ever made of any
09:48AM 17 digital penetration, correct?

09:48AM 18 A. Correct.

09:48AM 19 Q. Camera 1 indicates that the male customers would keep
09:49AM 20 their pants on throughout the dances, correct?

09:49AM 21 A. There's no representation of clothes coming off of the
09:49AM 22 males.

09:49AM 23 Q. So, and when you say "there's no representation," you're
09:49AM 24 saying other than the sentence both the male and female leave
09:49AM 25 their bottom garments on, correct? With the exception of

09:49AM 1 where the dancer would take her bottom garments off?

09:49AM 2 A. Correct.

09:49AM 3 Q. So as far as this report indicates, the male customers
09:49AM 4 would leave their bottom garments on, correct?

09:49AM 5 A. That's correct.

09:49AM 6 Q. No observations indicating anything otherwise?

09:49AM 7 A. Correct.

09:49AM 8 Q. Okay. Now, I'll just clear that.

09:49AM 9 Camera 2, as visible from this exhibit, is video footage
09:49AM 10 of the stage and not the VIP Room, correct?

09:49AM 11 A. That's correct.

09:49AM 12 Q. So when you talked about yesterday that one of the
09:49AM 13 cameras was outside the VIP Room, that was camera 2?

09:50AM 14 A. That's correct.

09:50AM 15 Q. And this indicates that camera 2 shows exotic dancing and
09:50AM 16 customers approaching the stage and giving the dancer money,
09:50AM 17 correct?

09:50AM 18 A. That's correct.

09:50AM 19 Q. Nothing indicated that there was anything really besides
09:50AM 20 that happening on camera 2?

09:50AM 21 A. On camera 2, correct.

09:50AM 22 Q. And -- and the agent's conclusion within this report is
09:50AM 23 that what says -- says camera 1, but I think the conclusion
09:50AM 24 is there's no relevant information from camera 2?

09:50AM 25 A. Yeah, I believe it's a typo.

09:50AM 1 Q. Sure. Okay. Camera 3 is, once again, we're back in the
09:50AM 2 VIP Room, correct?

09:50AM 3 A. Camera 3, yes.

09:50AM 4 Q. And this is video footage of a long room containing a
09:50AM 5 brown loveseat-style couch, correct?

09:50AM 6 A. That's correct.

09:50AM 7 Q. Again, the conclusion after reviewing the footage was
09:50AM 8 there was no relevant information?

09:50AM 9 A. Correct.

09:50AM 10 Q. Now, similar to camera 1, this report goes through and
09:50AM 11 documents what camera 3 generally showed, correct?

09:51AM 12 A. That's correct.

09:51AM 13 Q. Generally showed male customers and dancers engaging in
09:51AM 14 lap dances, correct?

09:51AM 15 A. Correct.

09:51AM 16 Q. And then it gives a description generally of those lap
09:51AM 17 dances that is very similar to what's in camera 1, correct?

09:51AM 18 A. That's correct.

09:51AM 19 Q. Okay. And again, in terms of camera 3, no indication
09:51AM 20 that there was ever any vaginal sex observed, correct?

09:51AM 21 A. Correct.

09:51AM 22 Q. No anal sex observed in camera 3, correct?

09:51AM 23 A. Correct.

09:51AM 24 Q. No digital penetration, correct?

09:51AM 25 A. Correct.

09:51AM 1 Q. No other physical contact where -- that involved a male
09:51AM 2 taking off his pants, correct?

09:51AM 3 A. Taking -- correct.

09:51AM 4 **MR. FOTI:** Okay. Can we go to the next page of the
09:51AM 5 document, please?

09:51AM 6 **BY MR. FOTI:**

09:51AM 7 Q. Okay. Camera 4. Again, inside the VIP Room, correct?

09:51AM 8 A. Correct.

09:51AM 9 Q. And you can see another one of the couches from camera 4,
09:51AM 10 right?

09:51AM 11 A. Correct.

09:51AM 12 Q. And the conclusion in camera 4, again, after reviewing
09:51AM 13 the footage, is that it contained no relevant information,
09:51AM 14 correct?

09:51AM 15 A. Per the report.

09:51AM 16 Q. And -- and you were never told anything other than, you
09:52AM 17 don't have any information other than what's in the report
09:52AM 18 regarding what was viewed on the footage, correct?

09:52AM 19 A. Correct. As I mentioned yesterday, I had not
09:52AM 20 independently reviewed those.

09:52AM 21 Q. Right. So you're relying on the report to essentially
09:52AM 22 inform you of what was viewable and what could be determined
09:52AM 23 by watching the footage, correct?

09:52AM 24 A. Correct.

09:52AM 25 Q. Now this report, again, indicates for camera 4 there's no

09:52AM 1 relevant information, correct?

09:52AM 2 A. Correct.

09:52AM 3 Q. And camera 4 again generally shows male customers and
09:52AM 4 dancers engaging in lap dances, correct?

09:52AM 5 A. Correct.

09:52AM 6 Q. And it describes the lap dances very similar to how it
09:52AM 7 described the lap dances in camera 1 and camera 3, correct?

09:52AM 8 A. Correct.

09:52AM 9 Q. And, again, it indicates that the males would keep their
09:52AM 10 pants on, correct?

09:52AM 11 A. Yes.

09:52AM 12 Q. And, again, in camera 4 there's no indication that there
09:52AM 13 was any vaginal sex ever observed in that seven-week period,
09:52AM 14 correct?

09:52AM 15 A. Correct.

09:52AM 16 Q. No anal sex observed, correct?

09:52AM 17 A. Correct.

09:52AM 18 Q. No digital penetration, correct?

09:53AM 19 A. Correct.

09:53AM 20 Q. No other sex act identified in here, correct?

09:53AM 21 A. There's groping and kissing.

09:53AM 22 Q. So, okay. Fair enough. So there's groping and kissing,
09:53AM 23 and I guess we could have -- argue over whether that's a sex
09:53AM 24 act. But definitely no type of penetration of any kind,
09:53AM 25 correct?

09:53AM 1 A. Correct.

09:53AM 2 Q. And what's described in here is consistent with what is
09:53AM 3 identified as generally showing male customers and dancers
09:53AM 4 engaging in lap dances, correct?

09:53AM 5 A. Correct.

09:53AM 6 Q. Okay. Camera 5 is a room containing three brown
09:53AM 7 loveseat-style couches, correct?

09:53AM 8 A. That's correct.

09:53AM 9 Q. So camera 5, some of the rooms in the VIP area had
09:53AM 10 multiple couches within a single room, correct?

09:53AM 11 A. Correct, based on the photographs I saw.

09:53AM 12 Q. Okay. Because you don't have an independent recollection
09:53AM 13 of the what the VIP Room looked like yourself, correct?

09:53AM 14 A. I remember generally seeing it, but I don't have a really
09:54AM 15 clear recollection of it.

09:54AM 16 Q. You said you might have been on the outside at some
09:54AM 17 point, the peripheral --

09:54AM 18 A. Correct. I think I looked in there and possibly I walked
09:54AM 19 through. Again, my focus was engaging with Mr. Ermin.

09:54AM 20 Q. If you do have a memory of looking into the VIP Room, the
09:54AM 21 first VIP Room that's present has multiple couches, correct?

09:54AM 22 If you don't, if you don't remember. It's okay.

09:54AM 23 A. Yeah, I don't clearly remember, but I remember seeing the
09:54AM 24 photos that were used.

09:54AM 25 Q. Okay. So we, at least according to this report, it's

09:54AM 1 clear that there was a camera showing multiple couches within
09:54AM 2 a single room, correct?

09:54AM 3 A. Correct.

09:54AM 4 Q. Okay. And, again, the conclusion after watching that

09:54AM 5 footage is that there was no relevant information identified,
09:54AM 6 correct?

09:54AM 7 A. That's what the report states.

09:54AM 8 Q. Yep. And, again, it indicates that there are

09:54AM 9 observations made of male customers and dancers engaging in
09:54AM 10 lap dances, correct?

09:54AM 11 A. Correct.

09:54AM 12 Q. And in -- it describes those lap dances in a way that's
09:55AM 13 very similar to the other cameras, correct?

09:55AM 14 A. Correct.

09:55AM 15 Q. Okay. And, again, in terms of camera 5, there's no
09:55AM 16 indication that any vaginal sex was ever observed, correct?

09:55AM 17 A. That's correct.

09:55AM 18 Q. No anal sex, correct?

09:55AM 19 A. Correct.

09:55AM 20 Q. No digital penetration, correct?

09:55AM 21 A. Correct.

09:55AM 22 Q. And, again, in camera 5 the male customers that were
09:55AM 23 observed always kept their pants on, correct?

09:55AM 24 A. Correct.

09:55AM 25 Q. Okay. Camera 6 is a camera of a small room within the

09:55AM 1 VIP area that contained a brown loveseat-style couch,
09:55AM 2 correct?

09:55AM 3 A. Correct.

09:55AM 4 Q. And I don't want to become too repetitive here, but this
09:55AM 5 is very similar to the other cameras?

09:55AM 6 A. Yes.

09:55AM 7 Q. Another determination was made that after viewing the
09:55AM 8 footage on camera 6, there was no relevant information,
09:55AM 9 correct?

09:55AM 10 A. Correct.

09:55AM 11 Q. It describes lap dances very similar to the other
09:55AM 12 cameras, correct?

09:55AM 13 A. It does.

09:55AM 14 Q. And just like the other cameras, there was no
09:56AM 15 observations of any vaginal sex, correct?

09:56AM 16 A. Correct.

09:56AM 17 Q. No anal sex, correct?

09:56AM 18 A. Correct.

09:56AM 19 Q. No digital penetration, correct?

09:56AM 20 A. Correct.

09:56AM 21 **MR. FOTI:** Okay. Can we go to the next page, please.

09:56AM 22 **BY MR. FOTI:**

09:56AM 23 Q. And the last camera that showed footage was camera 7,
09:56AM 24 correct?

09:56AM 25 A. That's correct.

09:56AM 1 Q. And camera 7 is also of a small room within the VIP area
09:56AM 2 showing a couch, correct?

09:56AM 3 A. A brown loveseat-style couch, correct.

09:56AM 4 Q. Yep. And very similar to the other cameras, it's
09:56AM 5 indicated that watching the footage showed that there was
09:56AM 6 customers and dancers engaging in lap dances, correct?

09:56AM 7 A. That's correct.

09:56AM 8 Q. Dances are described the same way they are in the other
09:56AM 9 cameras, correct?

09:56AM 10 A. Correct.

09:56AM 11 Q. A determination is made that there's no relevant
09:56AM 12 information, correct?

09:56AM 13 A. That's what report states.

09:56AM 14 Q. And then nobody ever has indicated as part of this
09:56AM 15 investigation that who watched the footage that made a
09:56AM 16 determination different than that, correct?

09:56AM 17 A. I'm sorry, can you rephrase that?

09:56AM 18 Q. Nobody else watched this footage that indicated that
09:57AM 19 there was relevant information contained in these?

09:57AM 20 A. Yeah, I believe they're -- just the one agent reviewed
09:57AM 21 it.

09:57AM 22 Q. Okay. And -- and, again, camera 7, similar to all of the
09:57AM 23 other cameras in the VIP Room, there's no indication there
09:57AM 24 was any vaginal sex observed, correct?

09:57AM 25 A. Correct.

09:57AM 1 Q. No anal sex observed, correct?

09:57AM 2 A. Correct.

09:57AM 3 Q. No digital penetration, correct?

09:57AM 4 A. Correct.

09:57AM 5 Q. No instance of any male attempting to take his pants off,
09:57AM 6 correct?

09:57AM 7 A. Correct.

09:57AM 8 **MR. FOTI:** Okay. We can take that exhibit down.

09:57AM 9 Can we pull up 3539EE. And can we go to page --

09:57AM 10 **BY MR. FOTI:**

09:57AM 11 Q. Well, first, Special Agent Burns, if you can just look at
09:58AM 12 that first page. This is another report related to DVR 2,
09:58AM 13 correct?

09:58AM 14 A. Correct. This is the report related to DVR 2.

09:58AM 15 Q. Okay. And DVR 2, we're talking about another one of the
09:58AM 16 DVRs that was seized from Pharaoh's in December of 2019?

09:58AM 17 A. Yes, it was 203.

09:58AM 18 **MR. FOTI:** Can we go to page 2, please.

09:58AM 19 **BY MR. FOTI:**

09:58AM 20 Q. Okay. Now, on direct you testified that the other two
09:58AM 21 DVR system, DVR 2 and 3, did not record as long of a period
09:58AM 22 of time as what was in the VIP Room, correct?

09:58AM 23 A. That's correct.

09:58AM 24 Q. This particular DVR system recorded going back about two
09:58AM 25 weeks, correct?

09:58AM 1 A. That's correct.

09:58AM 2 Q. And I think you can see in the report, which is not in
09:58AM 3 evidence yet, but I expect will be in a moment --

09:58AM 4 A. Certainly.

09:58AM 5 Q. -- that the majority of the footage starts from
09:58AM 6 November 28th, 2019, and goes until about the time of the
09:59AM 7 search, correct?

09:59AM 8 A. Correct, based on the first page.

09:59AM 9 Q. Okay. Now, this is -- you're familiar with this being a
09:59AM 10 report that was prepared based on the review of DVR 2,
09:59AM 11 correct?

09:59AM 12 A. Correct.

09:59AM 13 Q. And you were aware that had happened as part of the
09:59AM 14 investigation, correct?

09:59AM 15 A. Yes, I was.

09:59AM 16 Q. And you're familiar with this report, correct?

09:59AM 17 A. Yes, I am, generally.

09:59AM 18 Q. And this is the same report that you've reviewed in the
09:59AM 19 past in regard to the review of DVR 2, correct?

09:59AM 20 A. That's correct.

09:59AM 21 Q. No changes that you see, correct?

09:59AM 22 A. No.

09:59AM 23 **MR. FOTI:** Okay. At this time, I would seek to move
09:59AM 24 Government Exhibit 3539EE into evidence.

09:59AM 25 **MR. TRIPI:** No objection.

09:59AM 1 **THE COURT:** Received without objection.

09:59AM 2 **(GOV Exhibit 3539EE was received in evidence.)**

09:59AM 3 **BY MR. FOTI:**

09:59AM 4 Q. Okay. Now, I don't know if you remember without going
09:59AM 5 through it, but this report is a little bit longer than the
09:59AM 6 other one, just based on the page numbers you can see up at
09:59AM 7 the top-right corner, correct?

09:59AM 8 A. And the number -- there's quite a few more cameras on
09:59AM 9 this --

09:59AM 10 Q. Right.

10:00AM 11 A. -- DVR.

10:00AM 12 Q. Yep. On this one, on this particular DVR, there was a
10:00AM 13 total of 37 cameras; is that correct?

10:00AM 14 A. That's correct.

10:00AM 15 Q. I think there might have been one that didn't show
10:00AM 16 footage, but the majority of them showed footage, correct?

10:00AM 17 A. That's correct.

10:00AM 18 Q. Okay. And I just, without spending time going through
10:00AM 19 what was generally shown on each one, I just want to cover
10:00AM 20 what cameras were on this particular DVR.

10:00AM 21 So looking at this exhibit --

10:00AM 22 **MR. FOTI:** This is published to the jury at this
10:00AM 23 point?

10:00AM 24 **THE CLERK:** Yes.

25

10:00AM 1 **MR. FOTI:** Thank you.

10:00AM 2 **BY MR. FOTI:**

10:00AM 3 Q. -- so looking at this exhibit, you can see camera 1 is of

10:00AM 4 the front desk, or it says front desk, but it's -- that's

10:00AM 5 located near the front door of Pharaoh's, correct?

10:00AM 6 A. Yeah, the office is right off the -- the one door.

10:00AM 7 Q. Yep. And then camera 2 is a location in the front

10:00AM 8 vestibule of Pharaoh's, correct?

10:00AM 9 A. Correct.

10:00AM 10 Q. Camera 3 is a location outside the front entrance looking

10:01AM 11 down, correct?

10:01AM 12 A. That's correct.

10:01AM 13 Q. Camera 4 is a location, the left side of Pharaoh's facing

10:01AM 14 the stage, correct?

10:01AM 15 A. Correct.

10:01AM 16 Q. Camera 5 is a location, the right side of Pharaoh's

10:01AM 17 facing the stage, correct?

10:01AM 18 A. That's correct.

10:01AM 19 Q. Okay. Now before we move on to the next page, these

10:01AM 20 first five cameras each, in this exhibit that's now in

10:01AM 21 evidence, provide a summary of what was observed in each of

10:01AM 22 these areas, correct?

10:01AM 23 A. That's correct.

10:01AM 24 Q. At least what was observed in the video footage that

10:01AM 25 covers this two-week span, right?

10:01AM 1 A. Yes, by the agent that reviewed it, or agents, I can't
10:01AM 2 recall if it was multiple.

10:01AM 3 Q. Right. And to skip asking about each camera
10:01AM 4 individually, just looking at this report, this first page of
10:01AM 5 the report, would you agree with cameras 1 through 5 a
10:01AM 6 determination was made by the agent that there was no
10:01AM 7 relevant information on the footage from any of these
10:01AM 8 cameras, correct?

10:01AM 9 A. Correct.

10:01AM 10 Q. Okay. And -- and you would agree, based on your review
10:02AM 11 of the report, there was no indication that there was any
10:02AM 12 visible drug use, correct?

10:02AM 13 A. Correct.

10:02AM 14 Q. No -- there is no observation of what appears to be a
10:02AM 15 drug transaction, correct?

10:02AM 16 A. Correct.

10:02AM 17 Q. No observation of what would appear to be any type of
10:02AM 18 illegal contraband, correct?

10:02AM 19 A. Correct.

10:02AM 20 **MR. FOTI:** Okay. Can we go page 2 of the report,
10:02AM 21 please?

10:02AM 22 **BY MR. FOTI:**

10:02AM 23 Q. Okay. Camera 6 is a location on the right side of the
10:02AM 24 Pharaoh's bar facing the left side of the bar, correct?

10:02AM 25 A. Yes, correct.

10:02AM 1 Q. And camera 7 is basically the other side of the bar, it's
10:02AM 2 the left side of the Pharaoh's bar facing right?

10:02AM 3 A. Correct.

10:02AM 4 Q. Camera 8 is a location near the waitress station on the
10:02AM 5 left side of the bar, correct?

10:02AM 6 A. That's correct.

10:02AM 7 Q. Camera 9 is a location over the cash register behind the
10:03AM 8 bar, correct?

10:03AM 9 A. That's correct.

10:03AM 10 Q. Camera 10 is a location over the cash register as well?

10:03AM 11 A. Correct.

10:03AM 12 Q. Camera 11 is a location on the right side of the stage of
10:03AM 13 Pharaoh's with a view of the bar, correct?

10:03AM 14 A. That's correct.

10:03AM 15 Q. And so the pattern that's -- that is developing here is
10:03AM 16 these cameras are of some of the areas of Pharaoh's, they
10:03AM 17 have different angles on different portions of that front
10:03AM 18 room, correct?

10:03AM 19 A. That's accurate.

10:03AM 20 Q. Okay. Camera -- I don't know if I asked you about camera
10:03AM 21 11, but camera 11 is the location on the right side of the
10:03AM 22 stage with a view of the bar, correct?

10:03AM 23 A. That's correct.

10:03AM 24 Q. Camera 12 is a location at the employee entrance of the
10:03AM 25 office, correct?

10:03AM 1 A. That's correct.

10:03AM 2 Q. So that camera would cover an area where employees would
10:03AM 3 enter into the building, correct?

10:03AM 4 A. That's correct, for the report.

10:03AM 5 Q. And camera 13 is of the kitchen or prep area within the
10:03AM 6 kitchen, correct?

10:03AM 7 A. Of the window -- I recall there was a kind of like a
10:04AM 8 restaurant, or -- where you have the window and you put the
10:04AM 9 food up.

10:04AM 10 Q. As the report says, the food service window?

10:04AM 11 A. Correct, yes.

10:04AM 12 Q. And camera 14 is video footage of the liquor room,
10:04AM 13 correct?

10:04AM 14 A. That's correct.

10:04AM 15 Q. Okay. And again, I'm going to do this all together.

10:04AM 16 Cameras 6 through 14 that are discussed on this page,
10:04AM 17 there was observations discussed within this document of what
10:04AM 18 was observable for each of these areas, correct?

10:04AM 19 A. That's correct.

10:04AM 20 Q. And in the review of each of these cameras, a
10:04AM 21 determination was made that there was no relevant
10:04AM 22 information, correct?

10:04AM 23 A. Per the report, correct.

10:04AM 24 Q. So per the report from cameras 6 through 14, there's no
10:04AM 25 indication that there was any observations of drug use,

10:04AM 1 correct?

10:04AM 2 A. Correct.

10:04AM 3 Q. No observations of any type of apparent drug transaction,

10:04AM 4 correct?

10:04AM 5 A. That's correct.

10:04AM 6 Q. No observation of what appeared to be drugs or

10:04AM 7 contraband, correct?

10:04AM 8 A. No reference to that activity.

10:04AM 9 Q. Okay. And something like that would obviously be pretty

10:04AM 10 significant, correct?

10:05AM 11 A. Correct. I would document it.

10:05AM 12 Q. Yep.

10:05AM 13 **MR. FOTI:** Can we go to the next page, please.

10:05AM 14 **BY MR. FOTI:**

10:05AM 15 Q. All right. Going through this, camera 15, a location

10:05AM 16 behind the bar, correct?

10:05AM 17 A. Correct.

10:05AM 18 Q. Camera 16, a location in the pool table area to the left

10:05AM 19 of the stage, correct?

10:05AM 20 A. Correct.

10:05AM 21 Q. Camera 17 is in the hallway that leads to the bathroom

10:05AM 22 and the VIP area, correct?

10:05AM 23 A. Yeah, and the locker room.

10:05AM 24 Q. And the locker room?

10:05AM 25 A. Correct.

10:05AM 1 Q. That's what's indicated on the report, right?

10:05AM 2 A. On the report, yes.

10:05AM 3 Q. Okay. Camera 18 is a location outside where there's a
10:05AM 4 fenced-in area which is a smoking area, correct?

10:05AM 5 A. That's correct.

10:05AM 6 Q. And you recall that being sort of just before you go down
10:05AM 7 the hallway to the VIP area? If you don't, that's fine.

10:05AM 8 A. Yeah, I don't. I don't have an independent recollection
10:06AM 9 of that.

10:06AM 10 Q. You've told us a couple times, you were focused on the
10:06AM 11 interview of John Ermin.

10:06AM 12 A. Correct.

10:06AM 13 Q. Camera 19 a location by the employee entrance with a view
10:06AM 14 of the parking lot?

10:06AM 15 A. Correct.

10:06AM 16 Q. Camera 20 is a location in the office, correct?

10:06AM 17 A. That's correct.

10:06AM 18 Q. Camera 21 is a location that covers the screen of one of
10:06AM 19 the cash registers, right?

10:06AM 20 A. I'm sorry, which camera was that?

10:06AM 21 Q. I think I said 21. I meant to say 21.

10:06AM 22 A. Yes, that's correct.

10:06AM 23 Q. Which appears to be in, like, the waitress station area?

10:06AM 24 A. Correct. Yeah.

10:06AM 25 Q. Camera 22 is of the parking lot, or it's a view of one of

10:06AM 1 the areas of the parking lot?

10:06AM 2 A. That's correct.

10:06AM 3 Q. Okay. Now, again, cameras 15 through 22, each of -- this
10:06AM 4 exhibit indicates that there is -- was observations made of
10:07AM 5 what was viewable during that two-week span from each of
10:07AM 6 these cameras, correct?

10:07AM 7 A. Correct.

10:07AM 8 Q. And a summary is generally given of what you could
10:07AM 9 generally see in each of these areas when you review the
10:07AM 10 footage, correct?

10:07AM 11 A. That's correct.

10:07AM 12 Q. Okay. And in -- in each of these, the review of each of
10:07AM 13 these cameras, 15 through 22, resulted in the same conclusion
10:07AM 14 by the agent that there was no relevant information, correct?

10:07AM 15 A. Correct.

10:07AM 16 Q. And again, in cameras 15 through 22, there was no
10:07AM 17 observations of any drug use, correct?

10:07AM 18 A. There's no notation of that.

10:07AM 19 Q. There's no indication that there was an observation of
10:07AM 20 any drug transaction, correct?

10:07AM 21 A. Correct.

10:07AM 22 Q. There's no indication that there was any observation of
10:07AM 23 what appeared to potentially be drugs, correct?

10:07AM 24 A. Correct.

10:07AM 25 Q. Or any other type of contraband, correct?

10:07AM 1 A. Correct.

10:07AM 2 **MR. FOTI:** Okay. Can we go to the next page, please?

10:07AM 3 We're making our way through here.

10:08AM 4 **BY MR. FOTI:**

10:08AM 5 Q. Let's just go, put them together, cameras 23 through 25,
10:08AM 6 all footage from different areas of the parking lot outside
10:08AM 7 of Pharaoh's, correct?

10:08AM 8 A. I'm not -- I mean, the first three relate to the outside
10:08AM 9 of the parking lot.

10:08AM 10 Q. Right. So camera 23, camera 24, camera 25 were all
10:08AM 11 cameras viewing different parts of the parking lot?

10:08AM 12 A. That's correct.

10:08AM 13 Q. Okay. Camera 26 is an area with a view of the garage,
10:08AM 14 correct?

10:08AM 15 A. That's correct.

10:08AM 16 Q. Back inside of Pharaoh's, camera 27 is a location in the
10:08AM 17 kitchen with a view of the front kitchen area, correct?

10:08AM 18 A. Correct.

10:08AM 19 Q. Camera 28 is a location over another one of the cash
10:08AM 20 registers, correct?

10:08AM 21 A. That's correct.

10:08AM 22 Q. Same for camera 29, right?

10:08AM 23 A. Correct.

10:08AM 24 Q. Camera -- excuse me, camera 30 is a location in the main
10:09AM 25 bar area with a view of the bar, correct?

10:09AM 1 A. Correct.

10:09AM 2 Q. Camera 31 is a location in the hallway of Pharaoh's with
10:09AM 3 a view of the door that goes to the upstairs, correct?

10:09AM 4 A. That's correct.

10:09AM 5 Q. Okay. On this page, the -- the -- the agent documented
10:09AM 6 summaries of what was viewable in regards to cameras 23
10:09AM 7 through 31, correct?

10:09AM 8 A. That's correct.

10:09AM 9 Q. Okay. And upon reviewing the footage from each of those
10:09AM 10 cameras, a determination was made by the agent that there was
10:09AM 11 no relevant information, correct?

10:09AM 12 A. Correct.

10:09AM 13 Q. Okay. And, again, per all of the cameras that are
10:09AM 14 documented on this page, there was no indication that there
10:09AM 15 was ever an observation made of drug use, correct?

10:09AM 16 A. There's no indication in the report of any of that.

10:09AM 17 Q. No indication in the report that there was any
10:09AM 18 observation of what happened to potentially be a drug
10:09AM 19 transaction, correct?

10:09AM 20 A. Correct.

10:09AM 21 Q. No indication that there was ever an observation of what
10:10AM 22 could have potentially been drugs, correct?

10:10AM 23 A. Correct.

10:10AM 24 **MR. FOTI:** Can we go to the last page, please?

25

10:10AM 1 BY MR. FOTI:

10:10AM 2 Q. Okay. Camera 32 is a location in the hallway from the
10:10AM 3 main floor to the ATM locker rooms?

10:10AM 4 A. Correct.

10:10AM 5 Q. All right. Camera 33 is a location over the main floor
10:10AM 6 showing the left side of the stage?

10:10AM 7 A. That's correct.

10:10AM 8 Q. Camera 34 is a view of the Pharaoh's beer cooler, right?

10:10AM 9 A. That's correct.

10:10AM 10 Q. Camera 35 is a location with a view of the liquor storage
10:10AM 11 area, correct?

10:10AM 12 A. Correct.

10:10AM 13 Q. And the last camera listed is camera 37, which is a
10:10AM 14 location over the exit from the bar area out to the hallway,
10:10AM 15 correct?

10:10AM 16 A. That's correct.

10:10AM 17 Q. Again, in this last page of the report, cameras 32
10:10AM 18 through 37 provide a summary of what was generally observed
10:10AM 19 when viewing the footage from each of these cameras?

10:11AM 20 A. Yeah, a briefly summary.

10:11AM 21 Q. And, again, the determination was made that for cameras
10:11AM 22 32 through 37, there was no relevant information, correct?

10:11AM 23 A. Correct.

10:11AM 24 Q. And, again, no indication in this final page of the
10:11AM 25 report that there was ever an observation of any drug use,

10:11AM 1 correct?

10:11AM 2 A. Correct.

10:11AM 3 Q. There was never an observation of what appeared to be
10:11AM 4 drug transaction, correct?

10:11AM 5 A. Correct.

10:11AM 6 Q. Never an observation of what -- of anything that could
10:11AM 7 potentially be drugs, correct?

10:11AM 8 A. Correct.

10:11AM 9 Q. Okay.

10:11AM 10 **MR. FOTI:** We can take down that report.

10:11AM 11 Can we pull up Government Exhibit 3539EF?

10:11AM 12 **BY MR. FOTI:**

10:11AM 13 Q. Okay. Sir, this is the report that documents the last of
10:11AM 14 the three DVRs, DVR 3, correct?

10:12AM 15 A. Correct.

10:12AM 16 Q. Okay.

10:12AM 17 **MR. FOTI:** Can we go to page 2?

10:12AM 18 **BY MR. FOTI:**

10:12AM 19 Q. All right. And I'm showing you the second page of the
10:12AM 20 report. This is the report that you're familiar with that
10:12AM 21 documented what was viewed on the cameras that were contained
10:12AM 22 in DVR 3, correct?

10:12AM 23 A. That's correct.

10:12AM 24 Q. And this report is the same as when you've reviewed it in
10:12AM 25 the past, correct?

10:12AM 1 A. It is.

10:12AM 2 Q. No changes that you can observe here, correct?

10:12AM 3 A. Not that I see.

10:12AM 4 **MR. FOTI:** Okay. At this time, I would move in
10:12AM 5 3539EF.

10:12AM 6 **MR. TRIPI:** No objection.

10:12AM 7 **THE COURT:** Received without objection.

10:12AM 8 **(GOV Exhibit 3539EF was received in evidence.)**

10:12AM 9 **BY MR. FOTI:**

10:12AM 10 Q. Okay. Sir, this is the last of the DVRs, correct?

10:12AM 11 A. The third one, correct.

10:12AM 12 Q. This one is certainly shorter than DVR 2, right?

10:12AM 13 A. Yes.

10:12AM 14 Q. Okay. We have a total of seven cameras that were
10:12AM 15 viewable on this DVR, correct?

10:12AM 16 A. That's correct.

10:12AM 17 Q. And I'm just going to go through these ones, as well.

10:13AM 18 Camera 1 was another location in the hallway of the
10:13AM 19 Pharaoh's kitchen towards the bar area, correct?

10:13AM 20 A. Correct.

10:13AM 21 Q. Camera 2 is a location in the main bar area with a view
10:13AM 22 of the bar, correct?

10:13AM 23 A. Correct.

10:13AM 24 Q. Location 3 was a location at the door to the hallway
10:13AM 25 leading to the office area over the food prep station and the

10:13AM 1 kitchen window, correct?

10:13AM 2 A. Correct.

10:13AM 3 Q. Camera 4 is a location of the right side of Pharaoh's

10:13AM 4 facing the seating area, correct?

10:13AM 5 A. Correct.

10:13AM 6 Q. Camera 5 is a location directly over the VIP podium desk,

10:13AM 7 correct?

10:13AM 8 A. That's correct.

10:13AM 9 Q. And your understanding is there was only one VIP podium,

10:13AM 10 correct?

10:13AM 11 A. That's my understanding.

10:13AM 12 Q. That's the VIP podium outside of the VIP area, correct?

10:13AM 13 A. That's correct.

10:13AM 14 Q. And that's where we, based on your investigation as well

10:13AM 15 as the testimony we've heard through trial, that's where the

10:13AM 16 chips would be exchanged for money before a lap dances occur,

10:13AM 17 correct?

10:13AM 18 A. That's correct.

10:13AM 19 Q. If we go to the second page, camera 6 is a location

10:14AM 20 inside the store area that was the left side of the stage,

10:14AM 21 correct?

10:14AM 22 A. Correct.

10:14AM 23 Q. And camera 7 is a location inside of the Pharaoh's

10:14AM 24 office, correct?

10:14AM 25 A. Correct.

10:14AM 1 **MR. FOTI:** Can we go back to the previous page,
10:14AM 2 page 2?

10:14AM 3 **BY MR. FOTI:**

10:14AM 4 Q. Now, I'm going to ask you generally about the entire
10:14AM 5 document, cameras 1 through 7 on the two pages that we just
10:14AM 6 discussed, each of them provide a brief summary of what is
10:14AM 7 observable based on the footage of those particular areas
10:14AM 8 that the cameras covered, correct?

10:14AM 9 A. That's what's reported, correct.

10:14AM 10 Q. And I forgot to ask this. Just to be clear, this -- the
10:14AM 11 footage on this DVR covers a timeframe from November 30th up
10:14AM 12 to December 12th, correct?

10:14AM 13 A. Yeah, two weeks approximately.

10:14AM 14 Q. Yeah. So, two weeks, or maybe even just short of two
10:14AM 15 weeks on this particular DVR?

10:15AM 16 A. Yeah, that's accurate.

10:15AM 17 Q. Now, in terms of these seven cameras, again, a
10:15AM 18 determination was made by the agent reviewing that there was
10:15AM 19 no relevant information on each of the cameras, correct?

10:15AM 20 A. That's correct.

10:15AM 21 Q. And in terms of each of these cameras and what was
10:15AM 22 observable, there was no indication that there was any drug
10:15AM 23 transactions observed, correct?

10:15AM 24 A. That's correct.

10:15AM 25 Q. There's no indication that there was any drug use

10:15AM 1 observed, correct?

10:15AM 2 A. Correct.

10:15AM 3 Q. No indication that there was anything that appeared to
10:15AM 4 potentially be type of any controlled substance, correct?

10:15AM 5 A. Correct.

10:15AM 6 Q. Or any other type of contraband, correct?

10:15AM 7 A. Per the report, correct.

10:15AM 8 **MR. FOTI:** Okay. We can take that down.

10:15AM 9 **BY MR. FOTI:**

10:16AM 10 Q. Okay. Sir, yesterday we were talking about different
10:16AM 11 investigative tactics that can be used during the course of a
10:16AM 12 narcotics investigation, right?

10:16AM 13 A. Generally, yeah.

10:16AM 14 Q. I was just sort of hitting some general areas of
10:16AM 15 investigative techniques, correct?

10:16AM 16 A. Generally, in narcotics investigations, I believe that's
10:16AM 17 how you framed it.

10:16AM 18 Q. So I had asked you about your experience in narcotics
10:16AM 19 investigations, different techniques that you've used in
10:16AM 20 different cases, correct?

10:16AM 21 A. Correct.

10:16AM 22 Q. And I had talked to you about being involved in the use
10:16AM 23 of undercover transactions, undercover buys, correct?

10:16AM 24 A. Correct.

10:16AM 25 Q. And certainly in your experience in other narcotics

1 investigations, you've utilized that tactic before, correct?

2 A. In some cases, yes.

3 Q. We talked a little bit about surveillance, which I
4 believe you indicated there was at least some surveillance
5 throughout the course of this investigation, correct?

6 A. Some, yes.

7 Q. We talked about search warrants, correct?

8 A. Correct.

9 Q. All right. Now, the first search warrant that you were
10 involved in in regards to this investigation was a search of
11 Mr. Bongiovanni's home, correct?

12 A. Right, June 6th, 2019.

13 **MR. FOTI:** Can we pull up Government Exhibit 100A.1-1
14 in evidence.

15 **BY MR. FOTI:**

16 Q. Okay. You were asked about this on direct, correct?

17 A. I was.

18 Q. And this is -- this is a document that was located in
19 Mr. -- in a box in Mr. Bongiovanni's basement; is that
20 correct?

21 A. Yeah, in the Redweld folder.

22 Q. Now, we went through this on direct, but I just want
23 to -- because we didn't go through and read every line, it
24 probably would have been a waste of time, I want to clarify a
25 few things.

10:17AM 1 A. Certainly.

10:17AM 2 Q. All right. In this document, there is a reference to
10:18AM 3 Anthony Gerace, correct?

10:18AM 4 A. That's correct.

10:18AM 5 Q. All right. And there's a reference to Mr. Bongiovanni
10:18AM 6 taking certain steps to be alerted to any -- alerted through
10:18AM 7 this system in regards to certain things that could happen
10:18AM 8 for Anthony Gerace, correct?

10:18AM 9 A. For numbers related with him, correct.

10:18AM 10 Q. Now, in this document, there's no reference to Peter
10:18AM 11 Gerace, correct?

10:18AM 12 A. There is not.

10:18AM 13 Q. There's no reference to any phone number associated with
10:18AM 14 Peter Gerace, correct?

10:18AM 15 A. Correct.

10:18AM 16 Q. There's nothing about this document that references Peter
10:18AM 17 Gerace in any respect, correct?

10:18AM 18 A. Not that I recall.

10:18AM 19 **MR. FOTI:** Okay. Can we -- we can take that down?
10:18AM 20 Pull up 100A.1-2, which is also in evidence.

10:18AM 21 **BY MR. FOTI:**

10:18AM 22 Q. This was the other document you were asked about on
10:18AM 23 direct, correct?

10:18AM 24 A. Correct.

10:18AM 25 Q. And this was a document that was also located in

10:19AM 1 Mr. Bongiovanni's house during the search, correct?

10:19AM 2 A. In that same box, yes, sir.

10:19AM 3 Q. Yep. And here on the first page, it indicates who the

10:19AM 4 task force case agent was in this particular investigation,

10:19AM 5 correct?

10:19AM 6 A. That's correct.

10:19AM 7 Q. And that was Christopher Clark, correct?

10:19AM 8 A. It was.

10:19AM 9 Q. And then there's special agents who are listed as well

10:19AM 10 from the IRS, and ATF, and DEA, correct?

10:19AM 11 A. That's correct.

10:19AM 12 Q. And none of these individuals testified during the course

10:19AM 13 of this trial, correct?

10:19AM 14 A. They did not.

10:19AM 15 **MR. FOTI:** Okay. Can we go to page 2 of this report?

10:19AM 16 **BY MR. FOTI:**

10:19AM 17 Q. All right. This report lists 11 names on this particular

10:19AM 18 page on the left side, correct?

10:19AM 19 A. That's correct.

10:19AM 20 Q. And you talked about Frank Tripi being one of those

10:19AM 21 individuals, correct?

10:19AM 22 A. Correct.

10:19AM 23 Q. There's 11 other names besides Mr. Tripi, correct?

10:20AM 24 A. I think there's 11 total.

10:20AM 25 Q. I'm sorry, ten other.

10:20AM 1 A. Ten other.

10:20AM 2 Q. Better at math. All right. So --

10:20AM 3 A. Correct.

10:20AM 4 Q. -- better at basic math.

10:20AM 5 A. Okay.

10:20AM 6 Q. So ten other names besides Mr. Tripi on this particular

10:20AM 7 document, correct?

10:20AM 8 A. That's correct.

10:20AM 9 Q. Okay. And in none of these names are Peter Gerace,

10:20AM 10 correct?

10:20AM 11 A. That's correct.

10:20AM 12 Q. And Peter Gerace is not referenced in this document,

10:20AM 13 correct?

10:20AM 14 A. He is not referenced in this document.

10:20AM 15 **MR. FOTI:** Okay. We can take that down.

10:20AM 16 **BY MR. FOTI:**

10:20AM 17 Q. Okay. Obviously, there is a broad spectrum of potential

10:20AM 18 investigative tactics that can be used during the course of

10:20AM 19 investigation, correct?

10:20AM 20 A. That's correct.

10:20AM 21 Q. And there's specific techniques that can be used in

10:20AM 22 certain types of investigations like narcotics

10:21AM 23 investigations, correct?

10:21AM 24 A. That's correct.

10:21AM 25 Q. And we've talked about a couple of them at this point,

10:21AM 1 correct?

10:21AM 2 A. That's correct.

10:21AM 3 Q. Another type of technique is to request permission from
10:21AM 4 the Court for authorization to conduct a wiretap, correct?

10:21AM 5 A. That's a -- it's rarely used because it's pretty --
10:21AM 6 significant resources. You have to have exhausted all other
10:21AM 7 investigative possibilities, so it's not a common practice
10:21AM 8 because it -- the standard to get there is pretty onerous.

10:21AM 9 Q. Right. So we'll walk through that.

10:21AM 10 Like I asked about yesterday, if you were searching a
10:21AM 11 particular location, you have to make an application to the
10:21AM 12 Court, correct?

10:21AM 13 A. That's correct.

10:21AM 14 Q. You would have to establish certain allegations that
10:21AM 15 support probable cause, correct?

10:21AM 16 A. That's correct.

10:21AM 17 Q. And you have to get the Court's approval to conduct a
10:21AM 18 search of a particular location, right?

10:21AM 19 A. That's correct.

10:21AM 20 Q. Now, what you were just referring to is for wiretaps,
10:21AM 21 there's sort of these additional facts that you have to
10:21AM 22 establish, correct?

10:21AM 23 A. That's correct.

10:21AM 24 Q. Okay. So, again, you have to go through some of the same
10:21AM 25 process of establishing that there's allegations to support

1 probable cause, correct?

2 A. That's correct.

3 Q. And you have to also establish other points related to
4 whether you've exhausted other resources, or other feasible
5 methods of investigation consistent with the idea that a
6 wiretap is more of a last resort, correct?

7 A. Correct.

8 Q. And it doesn't have to be -- it doesn't have to be
9 necessarily the last resort, but you have to at least
10 indicate to the Court that other techniques have been
11 attempted and failed, correct?

12 A. Yeah. You have to essentially outline the exhausted
13 other -- other investigative techniques, as well you have to
14 outline that in order to get an understanding of the full and
15 essentially all the subjects of the conspiracy, you have to
16 outline that as well, that this would be a technique that
17 would potentially allow you to get the full size of the
18 organization and all the conspirators.

19 Q. So you've been involved in an investigation that has
20 utilized wiretaps, correct?

21 A. Yeah, a number of them through the years.

22 Q. And in terms of -- I think it predates your involvement
23 with this investigation, but one of the witnesses we heard
24 from at this trial was Jeff Anzalone?

25 A. Yes.

10:23AM 1 Q. And during the course of his investigation, wiretaps were
10:23AM 2 used?

10:23AM 3 A. That's my understanding.

10:23AM 4 Q. We've discussed during this trial at least one specific
10:23AM 5 recording that was picked up on wiretap of Jeff Anzalone and
10:23AM 6 K.L. discussing the purchase of Adderall, correct?

10:23AM 7 A. Correct.

10:23AM 8 Q. Okay. And that was a drug transaction being discussed
10:23AM 9 over the phone that was recorded pursuant to a wiretap,
10:23AM 10 correct?

10:23AM 11 A. It was.

10:23AM 12 Q. You weren't involved in the investigation at that time,
10:23AM 13 correct?

10:23AM 14 A. Yeah, that was not mine. I was not involved in that
10:23AM 15 Anzalone investigation.

10:23AM 16 Q. But consistent with what you just told this jury, that
10:23AM 17 was clearly a situation where the government had gotten an
10:23AM 18 authorization from a court to conduct a wiretap, correct?

10:23AM 19 A. Correct.

10:23AM 20 Q. They had went through the process that you just discussed
10:23AM 21 of establishing certain things to get that approval, correct?

10:23AM 22 A. That might have been a state wiretap, not a federal one,
10:24AM 23 I don't recall.

10:24AM 24 Q. Okay. And based on your experience, state or federal
10:24AM 25 court, the requirements in this geographical region are very

10:24AM 1 similar, correct?

10:24AM 2 A. My understanding, I haven't done a state wire here, I've

10:24AM 3 only --

10:24AM 4 Q. That's okay if you don't know.

10:24AM 5 A. Yeah, I can't say definitively.

10:24AM 6 Q. All right. So in any event, there was a wiretap in

10:24AM 7 regards to Mr. Anzalone, correct?

10:24AM 8 A. That's correct.

10:24AM 9 Q. And regardless of whether there was differences in the

10:24AM 10 procedure, you're aware that even a state wiretap requires

10:24AM 11 some sort of court authorization?

10:24AM 12 A. Absolutely.

10:24AM 13 Q. And that process was -- was something that clearly some

10:24AM 14 members of law enforcement went through to get the wiretap

10:24AM 15 that Mr. Anzalone was recorded on?

10:24AM 16 A. I believe it was Niagara County along with HSI, Niagara

10:24AM 17 County Sheriff's Office.

10:24AM 18 Q. Okay. And we talked about -- it was Mr. Anzalone

10:24AM 19 testified at this trial, correct?

10:25AM 20 A. He did.

10:25AM 21 Q. And the content of the recordings throughout his wiretap

10:25AM 22 were not a significant part of this trial, correct?

10:25AM 23 A. Correct.

10:25AM 24 Q. I think the only recording that was specifically

10:25AM 25 discussed was the recording involving K.L., correct?

10:25AM 1 A. That's --

10:25AM 2 Q. Maybe there were others.

10:25AM 3 A. Yeah, I think you're correct. I do recall that
10:25AM 4 testimony.

10:25AM 5 Q. Okay. Now, no wiretap was pursued in this investigation,
10:25AM 6 correct?

10:25AM 7 A. No. It was -- I don't think it was feasible, based on
10:25AM 8 the events of this investigation.

10:25AM 9 Q. Okay. So, regardless of whether it was feasible or not,
10:25AM 10 there was no attempt made, correct?

10:25AM 11 You didn't ask for authorization?

10:25AM 12 A. No. We weren't even close to getting there.

10:25AM 13 Q. You didn't ask authorization of the Court to have a
10:25AM 14 wiretap placed on Mr. Bongiovanni's phone, correct?

10:25AM 15 A. Again, the circumstances in this one weren't even close
10:25AM 16 to something like that.

10:25AM 17 Q. Okay. So, the answer is no, you did not attempt that?

10:25AM 18 A. We did not, no.

10:26AM 19 Q. And you did not attempt it in regards to Mr. Gerace's
10:26AM 20 phone, correct?

10:26AM 21 A. Correct.

10:26AM 22 Q. You had Mr. Gerace's phone number during the course of
10:26AM 23 this investigation?

10:26AM 24 A. Yes, his phone was seized in April of 2019.

10:26AM 25 Q. Okay. And he, Mr. Gerace, as far as you know, never

10:26AM 1 changed the phone number he was using, correct?

10:26AM 2 A. I believe he might have changed it after that.

10:26AM 3 Q. Okay.

10:26AM 4 A. I know he maintained, as I recall, I believe three
10:26AM 5 different phones throughout this investigation. But maybe,
10:26AM 6 that's going -- I can't say -- say that definitively, but I
10:26AM 7 know there was more than one phone.

10:26AM 8 Q. You're saying over a period of time?

10:26AM 9 A. Yes, over the course of our timeframe in the years.

10:26AM 10 Q. You don't -- you don't recall specifically if he changed
10:26AM 11 the phone number or not?

10:26AM 12 A. I can't say. I can't recall.

10:26AM 13 Q. In any event, if he did, you were aware that he changed
10:26AM 14 the phone number?

10:26AM 15 A. Correct.

10:26AM 16 Q. There's no period of time during this investigation where
10:26AM 17 you were struggling to figure out what phone Mr. Gerace was
10:26AM 18 using?

10:26AM 19 A. It's possible he had a burner, but we certainly had an
10:26AM 20 understanding of his phones throughout the course of the
10:26AM 21 investigation.

10:26AM 22 Q. Okay. When you say it's possible he had a burner, you
10:26AM 23 don't have any evidence of that, correct?

10:27AM 24 A. I don't believe we had any definitive evidence.

10:27AM 25 Q. You searched his house, correct?

10:27AM 1 A. I didn't search his house, but --
10:27AM 2 Q. Well --
10:27AM 3 A. -- his house was searched.
10:27AM 4 Q. -- the house was searched?
10:27AM 5 A. Correct.
10:27AM 6 Q. And you're familiar with what occurred during the course
10:27AM 7 of that search?
10:27AM 8 A. Generally.
10:27AM 9 Q. You don't recall there being any TracFone or burner phone
10:27AM 10 recovered?
10:27AM 11 A. I couldn't say without looking at the inventory, but I
10:27AM 12 don't recall.
10:27AM 13 Q. You don't recall?
10:27AM 14 A. No.
10:27AM 15 Q. And you don't recall any specific piece of evidence to
10:27AM 16 suggest Mr. Burns -- or, I'm sorry, that Mr. Gerace was ever
10:27AM 17 in possession of a burner phone or TracFone, correct?
10:27AM 18 A. Not that I recall.
10:27AM 19 Q. Okay. Now, you never pursued a wiretap for any phone
10:27AM 20 number that you had associated with Mr. Gerace, correct?
10:27AM 21 A. That's correct.
10:27AM 22 Q. There's no recorded phone calls involving Mr. Gerace
10:27AM 23 pursuant to a wiretap on any of his phones, correct?
10:27AM 24 A. Not pursuant to a wiretap.
10:27AM 25 Q. Okay. And do you recall any wiretaps picking up phone

1 calls of Mr. Gerace in regards to Mr. Anzalone or anybody
2 else that you reviewed?

3 A. Not that I recall. I'm not overly familiar with the
4 Anzalone investigation, whether Mr. Gerace was intercepted on
5 that or not.

6 Q. Okay. Whether he was or not, you don't recall ever
7 reviewing a recording of Mr. Gerace engaging in a drug
8 transaction, correct?

9 A. That's correct.

10 Q. And just because it hasn't come up in this trial, I don't
11 think it's come up in there this trial, when you listen to
12 recordings from wiretaps, it's sometimes the case that drug
13 transactions occur in code, correct?

14 A. Absolutely.

15 Q. So, when you're listening to people talk about a drug
16 transaction, you're not just listening to people say can I
17 buy some cocaine from you, right?

18 A. It's rare that it's that open, but occasionally.

19 Q. Right. And in your experience, throughout your
20 investigations, you often hear other words that appear to
21 indicate there was a transaction occurring?

22 A. It's very common that there's different codes and --

23 Q. At no point in your investigation did you ever hear a
24 phone call involving Mr. Gerace that appeared to be
25 consistent with a drug transaction, correct?

10:29AM 1 A. I did not listen to any recording of Mr. Gerace that I
10:29AM 2 recall, other than the voicemail of his phone, I think that's
10:29AM 3 the only recording.

10:29AM 4 Q. The voicemail that came in -- that came in earlier in the
10:29AM 5 trial, right?

10:29AM 6 A. Correct.

10:29AM 7 Q. Besides that, you never heard any recording via any
10:29AM 8 wiretap that involved Mr. Gerace engaged in what appeared to
10:29AM 9 be a drug transaction, correct?

10:29AM 10 A. That's correct.

10:29AM 11 Q. You've never heard any -- I think you indicated the only
10:29AM 12 one you ever heard was that voicemail. You've never heard
10:29AM 13 any recording at all of Mr. Gerace engaged in any drug
10:29AM 14 transaction, correct?

10:29AM 15 A. Not that I've heard.

10:30AM 16 **MR. FOTI:** Okay. Can -- can we pull up Government
10:30AM 17 Exhibit 555 on the screen, please?

10:30AM 18 Actually, can I just have a minute, Judge?

10:30AM 19 **THE COURT:** Sure.

10:31AM 20 **BY MR. FOTI:**

10:31AM 21 Q. This is a digital copy of Government Exhibit 555, which
10:31AM 22 we have on the board over there, correct?

10:31AM 23 A. That's correct.

10:31AM 24 Q. Okay. And in this exhibit, as part of -- yesterday I was
10:31AM 25 asking you about some of the things that -- particularly that

1 relate to testimony of some of these witnesses that's not
2 included in this exhibit, correct?

3 A. Yeah, as I mentioned yesterday, I wasn't -- we were not
4 gonna interpret testimony. It's not our --

5 Q. Right. So there's no documentation of those things I
6 asked about yesterday, such as who received some sort of
7 benefit or payment of expenses, correct?

8 A. Correct.

9 Q. And like I asked about yesterday, there's no indication
10 of which ones of these witnesses had been impeached at some
11 point, right?

12 A. That's right.

13 Q. Nothing about testimony at all, correct?

14 A. Correct.

15 Q. Now what is on here is a list of exhibits that were
16 identified, based on your review, as something that you
17 believed was relevant to the different charges or events that
18 are documented on this, correct?

19 A. Events, yeah, tied to the counts.

20 Q. So, for example, the line that goes down coming off of
21 the entrance of Pharaoh's Gentlemen's Club. It indicates
22 that there's three counts that are relevant to this drug
23 conspiracy allegation, correct?

24 A. Correct.

25 Q. And then it lists a number of exhibits that is intended

10:32AM 1 to provide some indication that in this summary chart those
10:32AM 2 appear to be exhibits that are relevant to that particular
10:32AM 3 account, correct?

10:32AM 4 A. Yeah, some exhibits, we didn't include each and every
10:32AM 5 one.

10:32AM 6 Q. Yeah, none of the exhibits on this chart include a
10:33AM 7 picture of any drugs that were seized from Pharaoh's,
10:33AM 8 correct?

10:33AM 9 A. That's correct.

10:33AM 10 Q. None of the exhibits on this chart are of any drugs that
10:33AM 11 were seized from Peter Gerace's home, correct?

10:33AM 12 A. Correct.

10:33AM 13 Q. None of the exhibits on this chart are any pictures of
10:33AM 14 drugs that were seized from either of those locations,
10:33AM 15 correct?

10:33AM 16 A. That's correct.

10:33AM 17 Q. None of the -- yesterday, you talked about this is --
10:33AM 18 this was ultimately charged as more of a historical
10:33AM 19 conspiracy, correct?

10:33AM 20 A. That's correct.

10:33AM 21 Q. And so there's a wide range of time that's covered in
10:33AM 22 each of these conspiracy counts, correct?

10:33AM 23 A. That's correct.

10:33AM 24 Q. Now, none of these exhibits are any pictures that were
10:33AM 25 provided of drugs at any time during the course of that

1 conspiracy, correct?

2 A. I'm sorry, can you --

3 Q. So in other words, none of the witnesses that are on the
4 bottom -- the bottom two rows there, none of those witnesses
5 provided pictures they took inside of Pharaoh's, correct?

6 A. Correct, no pictures. That they took -- are you
7 referring to the witnesses, that they took pictures?

8 Q. Yeah.

9 A. Yes. Correct.

10 Q. So you don't have any exhibits that reference pictures
11 that were taken by these witnesses of things that happened at
12 Pharaoh's, correct?

13 A. Correct.

14 Q. No pictures of any drugs located inside Pharaoh's at any
15 time during the course of any of these conspiracies, correct?

16 A. Correct.

17 Q. And we saw pictures of Peter Gerace throughout this
18 trial. No pictures of Peter Gerace ever in possession of any
19 drugs, correct?

20 A. Correct. I would add the caveat that most people don't
21 take pictures of themselves consuming narcotics.

22 Q. Well, that's fair. But you've also seen during the
23 course of this investigation that some of these witnesses had
24 pictures of themselves holding guns, correct?

25 A. Holding guns?

10:34AM 1 Q. Do you remember a picture of K.L. and P.H.?

10:34AM 2 A. Oh, correct. Yes, I recall that now.

10:35AM 3 Q. And during the course of your --

10:35AM 4 A. Sorry.

10:35AM 5 Q. And in the course of other narcotics investigations,
10:35AM 6 you've definitely seen people posting pictures or providing
10:35AM 7 pictures of large quantities of cash they're in possession
10:35AM 8 of, correct?

10:35AM 9 **MR. TRIPI:** Objection of what he's seen in other
10:35AM 10 cases.

10:35AM 11 **THE COURT:** Overruled.

10:35AM 12 **THE WITNESS:** Correct, yes, I have seen that in other
10:35AM 13 cases.

10:35AM 14 **BY MR. FOTI:**

10:35AM 15 Q. It may be stupid, but people do it, right?

10:35AM 16 A. I would agree with you, it may be stupid, but people do
10:35AM 17 do it.

10:35AM 18 Q. There was no -- no pictures like that in any of the
10:35AM 19 exhibits contained in this summary chart, correct?

10:35AM 20 A. Yep.

10:35AM 21 Q. And there were no -- no pictures like that entered at any
10:35AM 22 point during the course of this trial, correct?

10:35AM 23 A. Correct.

10:35AM 24 Q. None of these exhibits are recordings of Mr. Gerace ever
10:35AM 25 talking about any drug transactions, correct?

10:35AM 1 A. That's correct.

10:35AM 2 Q. Or any discussion of drugs at all, correct?

10:35AM 3 A. There is an exhibit of a voicemail where he talked about
10:35AM 4 tra -- or, the voicemail to Bongiovanni concerning the
10:36AM 5 TracFone and drug dealing.

10:36AM 6 Q. And, well, and drug dealing -- there was no reference to
10:36AM 7 drug dealing in that call, is there?

10:36AM 8 A. It relates to a ping order and can you track a --

10:36AM 9 Q. Sure.

10:36AM 10 A. -- getting a ping order on a burner phone, essentially a
10:36AM 11 TracFone for him.

10:36AM 12 Q. Ping orders are not exclusive to drug trafficking
10:36AM 13 investigations though, correct?

10:36AM 14 A. No, we use them for fugitives and things like that, as
10:36AM 15 well.

10:36AM 16 Q. So when you say it's a recording related to drugs, you're
10:36AM 17 kind of doing a bit of speculation in that regard, right?

10:36AM 18 A. I believe he says drugs. I'd have to listen to the
10:36AM 19 exhibit again. But I believe he says drug traffickers or
10:36AM 20 something. Going from memory.

10:36AM 21 Q. He might have said something like that. But in terms of
10:36AM 22 whether the recording involves Mr. Gerace discussing a drug
10:36AM 23 transaction, there's no discussion of that, correct?

10:36AM 24 A. Not a specific transaction, no.

10:36AM 25 Q. No. And there's no exhibit on this Government 555 that

10:36AM 1 contains a recording like that, correct?

10:36AM 2 A. That contains --

10:36AM 3 Q. A recording of Mr. Gerace discussing a drug transaction,

10:36AM 4 correct?

10:36AM 5 A. Correct.

10:36AM 6 Q. And there's no recording on this exhibit that discuss --

10:37AM 7 of Mr. Gerace discussing any type of commercial sex act,

10:37AM 8 correct?

10:37AM 9 A. Some of the Michalski texts could --

10:37AM 10 Q. I'm just asking about recordings.

10:37AM 11 A. Oh, recordings? I'm sorry. Correct.

10:37AM 12 Q. Okay. So, it's correct that there's no exhibits that

10:37AM 13 contain recordings of Mr. Gerace discussing a commercial sex

10:37AM 14 act, correct?

10:37AM 15 A. A recording. I'm sorry, I missed the recording.

10:37AM 16 Q. No, that's okay.

10:37AM 17 A. Correct.

10:37AM 18 Q. And you just referenced text messages that we reviewed on

10:37AM 19 direct involving Judge Michalski, correct?

10:37AM 20 A. That's correct.

10:37AM 21 Q. And in -- when you say -- when you kind of said, well,

10:37AM 22 some of the messages, which messages are you referring to?

10:37AM 23 A. Oh, I believe the first one where he says get some pussy

10:37AM 24 there.

10:37AM 25 Q. Let's get some pussy there?

10:37AM 1 A. Yes.

10:37AM 2 Q. There was no context to it, right?

10:37AM 3 A. I have context based on the investigation, but I don't
10:37AM 4 have context based on the text message.

10:37AM 5 Q. Right. The text messages don't say if they're talking
10:37AM 6 about going out to a bar together, correct?

10:38AM 7 A. Correct.

10:38AM 8 Q. It doesn't say what -- there's no context to indicate
10:38AM 9 whether there's a joke associated with that, correct?

10:38AM 10 A. Correct.

10:38AM 11 Q. There's nothing indicating what preceded that text
10:38AM 12 message, correct?

10:38AM 13 A. Correct.

10:38AM 14 Q. There's no followup that adds some sort of explanation to
10:38AM 15 what that was in reference to, correct?

10:38AM 16 A. Correct.

10:38AM 17 Q. There's no text messages in any of these exhibits where
10:38AM 18 there's a discussion of a commercial sex act being -- being
10:38AM 19 negotiated, correct?

10:38AM 20 A. Negotiated? No.

10:38AM 21 I guess I'm thinking about that, she does anal on the
10:38AM 22 Lamont one, but I don't see a negotiating. If you're asking
10:38AM 23 about negotiations, I don't.

10:38AM 24 Q. And you -- you recall from the text message thread
10:38AM 25 involving Mr. Lamont that after that comment, the

1 communication between Mr. Gerace and Mr. Lamont stops for
2 several months, correct?

3 A. I believe so. I don't have it in front of me, but I
4 think that's accurate.

5 Q. And there's no -- there's no context beyond just that
6 message which says LOL at the end, as to what -- whether it
7 was a joke, or whether it was serious, or what it was in
8 reference to, correct?

9 A. Correct.

10 Q. In other words, there's no response from Peter Gerace at
11 all to that message, correct?

12 A. Going off of memory, correct.

13 Q. All right. No -- so, going back to my original question,
14 none of these exhibits involve communication of Mr. Gerace
15 where there's negotiation over a commercial sex act, correct?

16 A. That's correct.

17 **MR. FOTI:** Okay. Can I just have one more moment,
18 Judge?

19 **THE COURT:** Yes.

20 **MR. FOTI:** Okay. Special Agent Burns, thank you.
21 Nothing further.

22 **MR. TRIPI:** Judge, I do have redirect. I hate to
23 ask, but can we take a five-minute break?

24 **THE COURT:** No, I think it's a good idea. That's
25 what I was planning on doing anyway.

10:40AM 1 Please remember my instructions about not
10:40AM 2 communicating about the case with anyone including each other,
10:40AM 3 and not making up your mind.

10:40AM 4 See you back here in about ten or 15 minutes.

10:40AM 5 (Jury excused at 10:40 a.m.)

10:41AM 6 **THE COURT:** So, do you plan to rest after this
10:41AM 7 witness?

10:41AM 8 **MR. TRIPI:** Yes, Judge.

10:41AM 9 **THE COURT:** Okay. So just as -- and how long do you
10:41AM 10 think your redirect's going to go?

10:41AM 11 **MR. TRIPI:** I hesitate to answer. 30 to 40 minutes
10:41AM 12 at max.

10:41AM 13 **THE COURT:** Okay. So, what I'm thinking is once
10:41AM 14 we're done with this witness, the government rests. We will
10:41AM 15 then break for lunch. And it will be a long break, because
10:41AM 16 we've got the argument, and you want to meet with Mr. Gerace,
10:41AM 17 which I think is --

10:41AM 18 **MR. FOTI:** Yes.

10:41AM 19 **THE COURT:** -- probably very wise.

10:41AM 20 So, and then we'll come back, and I'll tell the jury
10:41AM 21 we're going to take a long lunch and then come back, and we'll
10:41AM 22 have the plan for the rest of the week for you then.

10:41AM 23 **MR. TRIPI:** Sounds good.

10:41AM 24 **THE COURT:** And maybe we send them home then,
10:41AM 25 depending on where we are.

10:41AM 1 **MR. COOPER:** Depending on what the decision is.

10:42AM 2 **THE COURT:** Yeah. So, I don't have a problem with
10:42AM 3 that. Or, we continue with proof.

10:42AM 4 **MR. FOTI:** No, that's perfect. It gives them time
10:42AM 5 for their pizza party.

10:42AM 6 **THE COURT:** Yeah.

10:42AM 7 **MR. FOTI:** If we do end up calling witnesses, we have
10:42AM 8 the lunch to make sure everybody's here ready to go.

10:42AM 9 **THE COURT:** Yep. Terrific. Good.

10:42AM 10 So we're not in any rush right now, even if you're
10:42AM 11 going to take longer, so we'll take 15, 20 minutes right now
10:42AM 12 and come back.

10:42AM 13 **MR. TRIPI:** Sounds good. And, Judge, just a last
10:42AM 14 housekeeping thing. I think the defense filed something on
10:42AM 15 the buyer/seller last night. I intend to, however today goes,
10:42AM 16 get you some type of response today in writing.

10:42AM 17 **THE COURT:** Great.

10:42AM 18 **MR. TRIPI:** It will be short, but I hope that gives
10:42AM 19 the Court enough time to look at both filings.

10:42AM 20 **THE COURT:** Yeah. I think they submitted something
10:42AM 21 on two different charges, right? Buyer/seller and --

10:42AM 22 **MR. SOEHNLEIN:** And bribery/gratuity.

10:42AM 23 **MR. TRIPI:** I'll do a combined response.

10:42AM 24 **THE COURT:** Great. Terrific. Good.

10:42AM 25 **MR. SOEHNLEIN:** And just one more thing from us,

10:42AM 1 Judge. Mr. Gerace and I have the last appearance on any
10:42AM 2 Curcio issue today at 12:30 with Judge Roemer.

10:43AM 3 **THE COURT:** Oh.

10:43AM 4 **MR. SOEHNLEIN:** So that's just to flag that for the
10:43AM 5 lunch hour. I don't expect it to take long. But Judge Roemer
10:43AM 6 scheduled this a while ago. So I guess it would make sense to
10:43AM 7 be respectful of that --

10:43AM 8 **THE COURT:** In a different case?

10:43AM 9 **MR. SOEHNLEIN:** It's in a different case. That's
10:43AM 10 right. But it's me and Mr. Gerace.

10:43AM 11 **THE COURT:** That's fine. Okay?

10:43AM 12 **MR. TRIPI:** Okay.

10:43AM 13 **THE COURT:** Anything else we need to do right now?

10:43AM 14 **MR. TRIPI:** No, thank you, Judge.

10:43AM 15 **MR. FOTI:** No.

10:43AM 16 **THE COURT:** Okay. Good. We'll see you folks in a
10:43AM 17 little while.

10:43AM 18 **THE CLERK:** All rise.

10:43AM 19 (Off the record at 10:43 a.m.)

11:07AM 20 (Back on the record at 11:07 a.m.)

11:08AM 21 (Jury not present.)

11:08AM 22 **THE COURT:** Please be seated.

11:08AM 23 **THE CLERK:** We are back on the record for the
11:08AM 24 continuation of the jury trial in case numbers 19-cr-227 and
11:08AM 25 23-cr-37, United States of America versus Peter Gerace, Jr.

11:08AM 1 All counsel and parties are present.

11:08AM 2 **THE COURT:** Okay. Are we ready to go?

11:08AM 3 **MR. TRIPI:** Yes, Judge.

11:08AM 4 **THE COURT:** Anything we need to put on the record

11:08AM 5 from the government?

11:08AM 6 **MR. TRIPI:** I don't think so.

11:08AM 7 **THE COURT:** Anything from the defense.

11:08AM 8 **MR. FOTI:** No, Judge.

11:08AM 9 **THE COURT:** Okay. Let's bring them back, please,

11:08AM 10 Pat.

11:09AM 11 (Jury seated at 11:09 a.m.)

11:09AM 12 **THE COURT:** The record will reflect that all our

11:10AM 13 jurors are present.

11:10AM 14 I remind the witness that he's still under oath.

11:10AM 15 And, Mr. Tripi, you may begin your redirect.

11:10AM 16 **MR. TRIPI:** Thank you, Judge.

11:10AM 17

11:10AM 18 **REDIRECT EXAMINATION BY MR. TRIPI:**

11:10AM 19 Q. Good morning, Special Agent Burns.

11:10AM 20 A. Good morning, Mr. Tripi.

11:10AM 21 Q. Special Agent Burns, I'm going try to go in a sort of the

11:10AM 22 same order that Mr. Foti questioned you on topics. If I jump

11:10AM 23 around, I apologize in advance.

11:10AM 24 A. That's fine.

11:10AM 25 Q. You were asked, I think at the beginning of cross, about

11:10AM 1 sort of the number of personnel that were involved in aspects
11:10AM 2 of the investigation; do you recall that?

11:10AM 3 A. I do.

11:10AM 4 Q. You were asked a number of names of various agents. My
11:10AM 5 question is, on the day to day, were there far fewer agents
11:10AM 6 involved in the actual day-to-day investigation?

11:10AM 7 A. Yeah, definitely.

11:10AM 8 Q. For example, when witnesses need to be transported, do
11:10AM 9 two agents need to be involved in a transport?

11:10AM 10 A. They do.

11:10AM 11 Q. When one interview is conducted, do two agents need to be
11:10AM 12 present for that typically?

11:10AM 13 A. Typically. I mean, you try to always do that.

11:11AM 14 Q. Does it mean that those transporting agents, or even an
11:11AM 15 agent who does an interview, is a case agent to the extent
11:11AM 16 you are?

11:11AM 17 A. No. Correct.

11:11AM 18 Q. Okay. In terms of the day to day for the duration of
11:11AM 19 your time, were the -- essentially the lead case agents
11:11AM 20 yourself, Special Agent Ryan, and Special Agent Halliday, and
11:11AM 21 then others joined on at various points?

11:11AM 22 A. Yeah, depending. There was some, as I mentioned on
11:11AM 23 direct, there was some related matters that caused us to kind
11:11AM 24 of add some resources to the case.

11:11AM 25 Q. Yeah, you mentioned spinoff cases and other

11:11AM 1 investigations stemming from there, right?

11:11AM 2 A. Correct.

11:11AM 3 Q. And some of those other agents had more involvement in
11:11AM 4 those aspects?

11:11AM 5 A. Yeah, sometimes they were the point on other related
11:11AM 6 matters.

11:11AM 7 Q. And I don't want to get into the weeds on those other
11:11AM 8 matters --

11:11AM 9 A. Certainly.

11:11AM 10 Q. -- but is that an example of why the number of agents can
11:11AM 11 increase that are related to this?

11:11AM 12 A. Absolutely.

11:11AM 13 Q. And now you mentioned you were involved in several search
11:12AM 14 warrants. In your experience, in your involvement in this
11:12AM 15 case, does the number of agents that assist at a search
11:12AM 16 warrant, is that sort of an inflated number of people for a
11:12AM 17 particular event, and then they all go back to their normal
11:12AM 18 jobs?

11:12AM 19 A. Correct. For a search warrant, you need an entry team,
11:12AM 20 obviously for safety. You need seasoned agents. So that's a
11:12AM 21 multi-agent project for that day until you get the evidence
11:12AM 22 back, get it checked in, things along those lines.

11:12AM 23 Q. Do people who work in different parts of the office help
11:12AM 24 out essentially for a day, and then go work on other matters?

11:12AM 25 A. Yeah. It sometimes it will bleed into the next day to

11:12AM 1 finish up reports and things like that, but they have their
11:12AM 2 own cases as well.

11:12AM 3 Q. All right. Now, from there, I think you were asked about
11:12AM 4 a number of people who were interviewed who didn't testify
11:12AM 5 but whose names the jury might have heard at various points
11:13AM 6 of this trial, and maybe some names they didn't hear; do you
11:13AM 7 recall that?

11:13AM 8 A. I do.

11:13AM 9 Q. I'd like to go through that sort of generally first.

11:13AM 10 I want to -- I think some of the names that were
11:13AM 11 mentioned were: Michelle Sercu; D.P.; Megan Stabler; DJ Rob
11:13AM 12 Reed; Russell Salvatore; Angela Dingleday; Angela Newton;
11:13AM 13 Ashley Chapman or Trayham, I'm not sure which; Jessica
11:13AM 14 Leyland; Nick Ciechalski. Do you remember those names being
11:13AM 15 mentioned yesterday?

11:13AM 16 A. I do.

11:13AM 17 Q. Grouping them all together just for a moment, any
11:13AM 18 interviews of those people that the FBI conducted, those
11:13AM 19 interviews were turned over to the defense; is that correct?

11:13AM 20 A. Absolutely.

11:13AM 21 Q. Okay. And now I'd like to go through in a little bit of
11:13AM 22 detail just in general terms, even for the people who the
11:14AM 23 jury did see here, were a number of witnesses nervous to be
11:14AM 24 involved in this case?

11:14AM 25 A. Yes. Absolutely. In this case particularly, between the

1 Outlaws, and the organized crime, and then Mr. Gerace's
2 contacts in the community with law enforcement and judges,
3 I've never had an investigation where the witnesses have been
4 so fearful.

5 Q. Is it easy or difficult to get witnesses to open up about
6 sexual and private matters?

7 A. It's -- it's very difficult. And it's been particularly
8 also if it's a male agent with a female witness, that also
9 adds some difficulty to it. And building trust over a period
10 of time.

11 Q. So there are maybe a couple other challenges I didn't
12 even ask you about when I was asking you questions; is that
13 fair to say?

14 A. Yes, it's absolutely fair to say.

15 Q. Were all of the -- were all of the witnesses who were
16 interviewed forthcoming?

17 A. No, not at all.

18 Q. Okay.

19 A. Actually.

20 Q. When you were asked about was D.P., I think her dancer
21 name the jury has heard is Kiera, you -- you've reviewed her
22 interview?

23 A. It's been a while, but I did -- I've seen it.

24 Q. Based upon the totality of the investigation and
25 information available to you, did you assess that she was

1 forthcoming or less than forthcoming in her interview?

2 A. Less than forthcoming.

3 Q. Okay. Did you review the Megan Stabler interview?

4 A. It's been a while, but yes, I did.

5 Q. At some point, she was married to Rob Reed the DJ,
6 correct?

7 A. That's correct.

8 Q. And she was a longtime Pharaoh's employee?

9 A. Correct.

10 Q. When you reviewed her interview, did you assess that she
11 was forthcoming or less than forthcoming?

12 A. Less than forthcoming.

13 Q. Now I want to talk about DJ Rob Reed. That interview,
14 you did personally, correct?

15 A. That I did, correct.

16 Q. Tell the jury about -- I don't want to get into the
17 specifics of what he said, but tell the jury about how he
18 behaved towards you and the other agent you were with when
19 you went to interview him.

20 A. He was very short. It was a very cold day, he wouldn't
21 let us in the house, he stayed in the -- that's why I
22 remember. Obviously, it was important, but also the fact
23 that it was -- we were outside for an extended period of
24 time. He did answer some questions, but it was certainly --
25 it was brief. And it was not a back and forth.

11:16AM 1 Q. Were you cold?

11:16AM 2 A. I was very cold that day, that's why I remember it was
11:16AM 3 windy.

11:16AM 4 Q. Can you contrast that to how L.L. let the agents into her
11:16AM 5 house when she didn't know they were coming?

11:16AM 6 A. Yeah. I mean, most, usually if it's bad weather, in my
11:16AM 7 experience, people that are forthcoming will invite you in,
11:16AM 8 you'll sit down, you'll have a back and forth, a dialogue.

11:16AM 9 Q. And now in terms of some of the things he said to you, in
11:17AM 10 sum and substance --

11:17AM 11 **MR. TRIPI:** And this is not for the truth, Judge,
11:17AM 12 just to flag it.

11:17AM 13 **BY MR. TRIPI:**

11:17AM 14 Q. -- but did he say to you in 15 years he never saw a drug
11:17AM 15 inside Pharaoh's?

11:17AM 16 A. That's correct.

11:17AM 17 Q. Did that ring hollow to you?

11:17AM 18 A. Oh, extremely hollow. I thought he was absolutely not
11:17AM 19 forthcoming at all.

11:17AM 20 Q. Did you find that statement credible based on the
11:17AM 21 information you had developed to that point?

11:17AM 22 A. Not at all.

11:17AM 23 Q. Did DJ Rob Reed give you any leads of people you should
11:17AM 24 go talk to like Katrina Nigro did?

11:17AM 25 A. He did not.

11:17AM 1 Q. Then you were asked about Russell Salvatore; do you
11:17AM 2 remember that?

11:17AM 3 A. I do.

11:17AM 4 Q. And you interviewed him?

11:17AM 5 A. I did.

11:17AM 6 Q. And he had you also interview his manager, Mark Jerge; is
11:17AM 7 that right?

11:17AM 8 A. Yes, he directed us to Mr. Jerge, who had more details
11:17AM 9 about the operations and some of the questions we were
11:17AM 10 asking.

11:17AM 11 Q. Through that aspect of the investigation, did you learn
11:17AM 12 that the defendant had a standing room at Salvatore's, or
11:18AM 13 Russell Salvatore's?

11:18AM 14 A. I believe we knew that previously or suspected --

11:18AM 15 **MR. FOTI:** Objection.

11:18AM 16 **THE COURT:** I'm sorry.

11:18AM 17 **MR. FOTI:** Objection, that's hearsay.

11:18AM 18 **THE COURT:** Hearsay, yeah. Sustained.

11:18AM 19 The jury will strike that.

11:18AM 20 **BY MR. TRIPPI:**

11:18AM 21 Q. Did Russell Salvatore deny getting a prostitute from
11:18AM 22 Mr. Gerace, but indicate he didn't need to because he was the
11:18AM 23 boss of his restaurant?

11:18AM 24 A. Correct. He did.

11:18AM 25 Q. In the context of that discussion, did you understand

11:18AM 1 younger women work for him at his restaurant?

11:18AM 2 A. I did.

11:18AM 3 Q. Did you assess that as forthcoming or less than
11:18AM 4 forthcoming?

11:18AM 5 A. Less than forthcoming.

11:18AM 6 Q. You were asked about Angela Dingleday. Was she sort of
11:19AM 7 interviewed more towards the tail end, sort of before trial?

11:19AM 8 A. Correct, yes.

11:19AM 9 Q. So the investigation was basically over at that point.
11:19AM 10 We were heading towards trial?

11:19AM 11 A. Yeah, I believe it was post-indictment, and we circled
11:19AM 12 the other way.

11:19AM 13 Q. Just a name that was out there, and --

11:19AM 14 A. Yeah, who we got to, and wanted to follow up on.

11:19AM 15 Q. Was her interview turned over?

11:19AM 16 A. Yes, it was.

11:19AM 17 Q. I think there were two names that you didn't recall,
11:19AM 18 Angela Newton and Ashley Chapman, but you were asked about
11:19AM 19 the fact that Jessica Leyland did not testify in this trial;
11:19AM 20 do you recall that?

11:19AM 21 A. I do.

11:19AM 22 Q. Was she arrested, charged, and did she plead guilty to
11:19AM 23 witness tampering?

11:19AM 24 A. She did.

11:19AM 25 Q. Did she decline to cooperate through her attorney?

11:19AM 1 A. She did proffer twice, but ultimately declined to
11:19AM 2 cooperate further.

11:19AM 3 Q. And in those proffers, did you assess the reliability or
11:20AM 4 credibility?

11:20AM 5 A. It was -- she was less than forthcoming.

11:20AM 6 Q. And was her witness tampering conviction, her plea,
11:20AM 7 related to her conduct towards P.H.?

11:20AM 8 A. It was.

11:20AM 9 Q. Nick Ciechalski, and I can't spell his name, I barely
11:20AM 10 pronounced it right, but do you know who I'm talking about?

11:20AM 11 A. I do.

11:20AM 12 Q. He was interviewed?

11:20AM 13 A. He was.

11:20AM 14 Q. His interview was turned over to the defense?

11:20AM 15 A. It was.

11:20AM 16 Q. And he was a Pharaoh's employee, manager?

11:20AM 17 A. For later -- later years.

11:20AM 18 Q. What timeframe?

11:20AM 19 A. I probably need the report to give you a hard and fast,
11:20AM 20 but I thought it was '18. '17, '18. But to testify
11:20AM 21 specifically, I need to look at that document.

11:20AM 22 Q. I understand.

11:20AM 23 In the interest of time, fair to say it was closer toward
11:20AM 24 the end of the conduct that we're dealing with?

11:20AM 25 A. As I recall it.

11:20AM 1 Q. Were his interview reports provided to the defense?

11:21AM 2 A. They were.

11:21AM 3 Q. In terms of his interview, in part of it did he indicate
11:21AM 4 usually he was out front and not in a position to see things
11:21AM 5 that were happening in the back?

11:21AM 6 A. As I recall -- I did not interview him, but I recall,
11:21AM 7 that's what I was informed.

11:21AM 8 **MR. FOTI:** Objection.

11:21AM 9 **THE COURT:** Sorry?

11:21AM 10 **MR. TRIPI:** He was asked about assessments he made
11:21AM 11 and so --

11:21AM 12 **THE COURT:** Just a second.

11:21AM 13 **MR. TRIPI:** Okay. I'm sorry, Judge.

11:21AM 14 **THE COURT:** The objection is sustained, and the jury
11:21AM 15 will strike the answer.

11:21AM 16 Next question.

11:21AM 17 **BY MR. TRIPI:**

11:21AM 18 Q. I'm going to try to rephrase once.

11:21AM 19 Did you -- did you assess whether Mr. Ciechalski had
11:21AM 20 relevant information to provide?

11:21AM 21 A. It did not appear he had relevant information to provide.

11:22AM 22 Q. All right. And you were asked questions moving onto your
11:22AM 23 chart, it's -- it's -- the large version is sort of next to
11:22AM 24 you back there --

11:22AM 25 A. Correct.

11:22AM 1 Q. -- in view of the jury. We can put it up briefly. I'm
11:22AM 2 not going to go through the chart right now, but just some
11:22AM 3 general questions about it and maybe I'll circle back and put
11:22AM 4 a little more specific later.

11:22AM 5 You were asked questions about sort of witness testimony
11:22AM 6 as it pertains to this chart; do you remember that?

11:22AM 7 A. Correct.

11:22AM 8 Q. Fair to say that the chart only summarizes in picture
11:22AM 9 format who testified and exhibits that were introduced?

11:22AM 10 A. That's correct.

11:22AM 11 Q. It doesn't summarize testimony at all?

11:23AM 12 A. Correct. It does not. And that was a -- a factor when
11:23AM 13 we put it together. It was we were not to interpret
11:23AM 14 testimony.

11:23AM 15 Q. Is that because that's the jury's job?

11:23AM 16 A. Correct. It's the jury's job to determine the testimony
11:23AM 17 and interpret it.

11:23AM 18 Q. Nevertheless, you were asked about various things that
11:23AM 19 you did or did not include on the chart. Did you summarize
11:23AM 20 how the witnesses were corroborated?

11:23AM 21 A. I did not.

11:23AM 22 Q. Did you summarize, for example, how K.A. may have
11:23AM 23 corroborated A.A., for example?

11:23AM 24 A. Correct, I did not, again --

11:23AM 25 Q. You didn't summarize any testimony?

11:23AM 1 A. No, we did not.

11:23AM 2 Q. So, to ask it in one more concise question, this chart
11:23AM 3 doesn't go through all the ways people were corroborated,
11:23AM 4 correct?

11:23AM 5 A. No, it does not.

11:23AM 6 Q. You were asked about a photo, 490B, and you seemed a
11:24AM 7 little bit unsure about who was in it. But I just want to
11:24AM 8 touch on Exhibit 490B.

11:24AM 9 **MR. TRIPI:** We can take that down for now.

11:24AM 10 **BY MR. TRIPI:**

11:24AM 11 Q. Generally, do people's appearances change over time?

11:24AM 12 A. Absolutely.

11:24AM 13 Q. We've seen sort of iterations even of the defendant from
11:24AM 14 photographs in 2005, 2011, and later on. Did his appearance
11:24AM 15 change over time?

11:24AM 16 A. Yes.

11:24AM 17 Q. Okay. So is that a normal human thing that happens as
11:24AM 18 people age?

11:24AM 19 A. Mine is -- mine has changed, unfortunately.

11:24AM 20 Q. Same here. All right.

11:24AM 21 **MR. TRIPI:** We can take that down.

11:24AM 22 **THE WITNESS:** And my hairline.

11:24AM 23 **BY MR. TRIPI:**

11:24AM 24 Q. You were asked about whether Mr. Gerace had
11:24AM 25 communications with certain people, and I think those

1 questions were sort of based in Exhibit 310AT, which is his
2 list of some of the contacts that were in his phone; is that
3 right?

4 A. That's right.

5 Q. And now, those weren't all of the contacts in his phone,
6 they were some of the contacts?

7 A. That's correct.

8 Q. And nevertheless, between phone records and
9 communications from the phone, did he have contact with
10 Anthony Gerace?

11 A. Yes, he did.

12 Q. Did he have contact with Tom Doctor?

13 A. Yes, he did.

14 Q. Did he have contact with Judge John Michalski?

15 A. Yes.

16 Q. Did he have contact with Detective Gregory Trotter?

17 A. Certainly.

18 Q. Did he have contact with Darryl LaMont?

19 A. He did.

20 Q. Did he have contact with Susan Michalski, Judge
21 Michalski's wife?

22 A. He did.

23 Q. Did he have contact in his phone records with Lou Selva?

24 A. He did.

25 Q. Did he have contact in his text messages with Mike

11:25AM 1 Masecchia?

11:25AM 2 A. He did.

11:25AM 3 Q. Did he have contact with Chris Chudy?

11:25AM 4 A. He did.

11:25AM 5 Q. Did he have contact with Tommy O, the Outlaws?

11:25AM 6 A. He did.

11:25AM 7 Q. Did he have contact with P.H.?

11:26AM 8 A. He did.

11:26AM 9 Q. Did he have contact with a New York State police officer

11:26AM 10 named Rob Vashion?

11:26AM 11 A. It's Mark -- Mike -- I don't remember his first name, but

11:26AM 12 it's -- Vashion is his last name. I thought it was Michael,

11:26AM 13 but I could be wrong.

11:26AM 14 Q. Maybe I got the name wrong. If I got the name wrong, I

11:26AM 15 apologize.

11:26AM 16 **MR. TRIPI:** For the witness only, can we show the

11:26AM 17 Exhibit 310AR just to refresh on the name.

11:26AM 18 Let me know if this refreshes your recollection or

11:26AM 19 mine on the name.

11:26AM 20 It's 310AR for the witness only. Give me one second.

11:26AM 21 **THE CLERK:** I'll take it down.

11:26AM 22 **MR. TRIPI:** Yeah, it should be 310AR.

11:26AM 23 **THE CLERK:** Okay.

11:26AM 24 **BY MR. TRIPI:**

11:27AM 25 Q. Does that refresh your recollection that I got the name

11:27AM 1 wrong?

11:27AM 2 A. Correct.

11:27AM 3 Q. What's the name?

11:27AM 4 A. Robert V-I-S-H-I-O-N.

11:27AM 5 Q. Take it down?

11:27AM 6 A. You might have had it right. Vishion, I'm very

11:27AM 7 comfortable with the last name.

11:27AM 8 Q. Is Robert Vishion, was he a New York State police officer

11:27AM 9 during the time of this investigation?

11:27AM 10 A. A portion of it, I believe he retired towards the end.

11:27AM 11 Q. Okay. Did he make references to being in contact with

11:27AM 12 another law enforcement officer, last name Sliwa?

11:27AM 13 A. He did.

11:27AM 14 Q. Who was Sliwa?

11:27AM 15 A. I believe he's Mark Sliwa, he was a lieutenant with

11:27AM 16 Amherst. I believe he's retired.

11:27AM 17 Q. Did he have contact with another law enforcement officer

11:27AM 18 named Scioli?

11:27AM 19 A. Yeah, Scioli was a New York State trooper. Who is also,

11:27AM 20 I believe, retired now.

11:27AM 21 Q. Did he have contact and communication with former Buffalo

11:28AM 22 Police Commissioner Dan Derenda?

11:28AM 23 A. Yes.

11:28AM 24 Q. Did he have contact with former Buffalo Police

11:28AM 25 Commissioner Rocco Dina?

11:28AM 1 A. Yes.

11:28AM 2 Q. And were there a number of others?

11:28AM 3 A. Law enforcement, yes, there were.

11:28AM 4 Q. I don't want to keep going. Many other people he had
11:28AM 5 contact with?

11:28AM 6 A. Generally, yes. Absolutely.

11:28AM 7 **MR. TRIPI:** Okay. Can we pull up Exhibit 240E in
11:28AM 8 evidence. E, as in Evelyn, I guess.

11:28AM 9 **BY MR. TRIPI:**

11:28AM 10 Q. Do you know who Anthony Barba is?

11:28AM 11 A. I know the name.

11:28AM 12 Q. Okay.

11:28AM 13 A. I wouldn't know him by appearance.

11:28AM 14 Q. Okay. We'll take this down then.

11:28AM 15 A. But I'm aware that he was a Buffalo -- I believe

11:28AM 16 high-ranking Buffalo police officer. He's retired, I

11:29AM 17 believe.

11:29AM 18 Q. Was he a deputy police commissioner?

11:29AM 19 A. That's correct. He was.

11:29AM 20 **MR. FOTI:** Judge, can we approach briefly?

11:29AM 21 **THE COURT:** Approach? Sure, yeah, come up.

11:29AM 22 (Sidebar discussion held on the record.)

11:29AM 23 **MR. FOTI:** I haven't been objecting, and I don't know
11:29AM 24 how much Mr. Tripi is going with this, but it seems like the
11:29AM 25 questions are going towards law enforcement contacts.

11:29AM 1 I don't remember crossing about anything along those
11:29AM 2 lines at all.

11:29AM 3 I definitely did cross about some of the things that
11:29AM 4 have been covered at this point on redirect, but I think this
11:29AM 5 is now an area that I didn't get into.

11:29AM 6 **MR. TRIPI:** He crossed on 310AT, and there were law
11:29AM 7 enforcement contacts in that -- in the phone, in
11:29AM 8 Exhibit 310AT. There are also law enforcement contacts in
11:29AM 9 photos, and so that's within the scope of where -- the cross
11:29AM 10 that was done.

11:29AM 11 **THE COURT:** How so? Because he talked about an
11:29AM 12 exhibit, that exhibit's wide open to anything you want to put
11:29AM 13 in?

11:30AM 14 **MR. TRIPI:** I think so.

11:30AM 15 **THE COURT:** Wasn't the exhibit in on your direct?

11:30AM 16 **MR. TRIPI:** Yeah, and he crossed on it. And so I'm
11:30AM 17 now rebutting some of the inferences that he's --

11:30AM 18 **THE COURT:** What's the rebuttal that you're putting
11:30AM 19 in by noting law enforcement contacts in there?

11:30AM 20 **MR. TRIPI:** Because there was a cross about these --
11:30AM 21 these are in the contacts in your phone, and you didn't
11:30AM 22 interview everybody. You didn't -- there are -- it's gonna
11:30AM 23 circle back later, because he crossed him on different law
11:30AM 24 enforcement techniques and challenges.

11:30AM 25 **THE COURT:** Okay.

11:30AM 1 **MR. TRIPI:** And when someone has this level of
11:30AM 2 contact with members of law enforcement, it ties the hands of
11:30AM 3 law enforcement. There were state police officers involved in
11:30AM 4 this investigation. Law enforcement community talks, so that
11:30AM 5 ties into the challenges we're going to talk about at the end.

11:30AM 6 And so I think it -- it -- it -- it's not just
11:30AM 7 directed towards his cross on 310AT, but he ended with you
11:30AM 8 didn't do this, you didn't do that.

11:30AM 9 **THE COURT:** Yeah.

11:31AM 10 **MR. TRIPI:** And there's a lot of reasons for that
11:31AM 11 that I kind of need to lay a groundwork for.

11:31AM 12 **THE COURT:** Why isn't that legitimately in response
11:31AM 13 to the cross-examination about the techniques that you didn't
11:31AM 14 use?

11:31AM 15 **MR. FOTI:** I guess that argument --

11:31AM 16 **THE COURT:** The answer would be, well, because he had
11:31AM 17 so many law enforcement contacts, and he's got to establish
11:31AM 18 that he's got the law enforcement contacts to make that
11:31AM 19 argument.

11:31AM 20 **MR. FOTI:** Yeah, I -- I -- I guess I didn't foresee
11:31AM 21 that that's where this was going. I think that is a
11:31AM 22 response --

11:31AM 23 **MR. TRIPI:** And I think that this is the -- probably
11:31AM 24 in this bucket, this is the last person I'm asking about. He
11:31AM 25 didn't know the photo.

11:31AM 1 **THE COURT:** Okay. I think we've established you can
11:31AM 2 legitimately do this. You're withdrawing your objection?

11:31AM 3 **MR. FOTI:** Yeah, based on that.

11:31AM 4 (End of sidebar discussion.)

11:31AM 5 **BY MR. TRIPPI:**

11:31AM 6 Q. Okay. Even if you're not -- you didn't recognize the
11:31AM 7 photo, are you generally aware of Anthony Barba's status as a
11:31AM 8 Buffalo Police Deputy Commissioner?

11:31AM 9 A. Definitely.

11:31AM 10 Q. And are you aware of his relationship generally with the
11:32AM 11 defendant?

11:32AM 12 A. They were friends.

11:32AM 13 Q. I'm gonna circle back to this later on, but there was
11:32AM 14 cross-examination about various techniques and tactics that
11:32AM 15 were not used in terms of undercovers and C.I.s, I'm going to
11:32AM 16 ask about it again later when I ask you about wiretaps.

11:32AM 17 But to touch on it right where we are now in sort of the
11:32AM 18 same chronology that Mr. Foti was going, just to lay the
11:32AM 19 groundwork, when you came into the investigation, by that
11:32AM 20 point, did you get briefed up and were you aware of two
11:32AM 21 different instances of New York State Police undercovers
11:32AM 22 endeavoring to infiltrate Pharaoh's?

11:32AM 23 A. Yeah, I did learn about that. I can't recall exactly
11:32AM 24 when, but --

11:32AM 25 Q. You were cross-examined about decisions you made though.

11:32AM 1 Did your awareness of those situations factor into
11:33AM 2 investigative decisions that were made?

11:33AM 3 A. Yeah, that, and as well as the circumstances of this
11:33AM 4 particular -- where we were at in the case, the events of
11:33AM 5 that.

11:33AM 6 Q. I'm just asking about that right now though --

11:33AM 7 A. Absolutely.

11:33AM 8 Q. -- and I'll get to other circumstances later. Are you
11:33AM 9 with me?

11:33AM 10 A. Yep.

11:33AM 11 Q. All right. Are you familiar with who Joel Catuzza was?

11:33AM 12 A. Yes.

11:33AM 13 Q. Who was that?

11:33AM 14 A. He was a New York State trooper that kind of oversaw the
11:33AM 15 undercover -- an attempt to do some undercover purchases, and
11:33AM 16 successfully, in Pharaoh's. I'm not --

11:33AM 17 Q. Let me ask you, was he a New York State Police undercover
11:33AM 18 agent?

11:33AM 19 A. He was.

11:33AM 20 Q. In 2015, early 2016, did he do some work inside Pharaoh's
11:33AM 21 that culminated in K.A.'s arrest?

11:33AM 22 A. Yes. I believe he was the undercover that directly
11:33AM 23 purchased from her.

11:33AM 24 Q. Okay. When you got involved in this investigation, did
11:33AM 25 you learn of challenges that arose during Joel Catuzza's

11:33AM 1 investigation inside Pharaoh's?

11:33AM 2 A. I did.

11:33AM 3 Q. Did some of those challenges relate to his undercover
11:34AM 4 license plate being run by members of -- a member of the
11:34AM 5 Cheektowaga Police Department?

11:34AM 6 A. It did.

11:34AM 7 Q. Did that cause a spinoff investigation?

11:34AM 8 A. We did look into that.

11:34AM 9 Q. Okay. Is there more looking into that that may be done
11:34AM 10 in the future?

11:34AM 11 A. Definitely.

11:34AM 12 Q. And Cheektowaga is where the gentleman's club is located,
11:34AM 13 correct?

11:34AM 14 A. That's correct.

11:34AM 15 Q. Did Joel Catuzza express concerns that his undercover
11:34AM 16 license plate was run at a time when he wasn't at Pharaoh's?

11:34AM 17 A. He did.

11:34AM 18 Q. Did that factor into your assessments in the
11:34AM 19 investigative decisions made related to the case?

11:34AM 20 A. Definitely.

11:34AM 21 Q. In 2018, did you also become aware that another state
11:34AM 22 police investigator named Angel Benitos-Santos made efforts
11:34AM 23 to purchase drugs inside Pharaoh's?

11:34AM 24 A. Yes.

11:34AM 25 Q. Did you debrief with Angel Benitos-Santos about that at

11:35AM 1 some point?

11:35AM 2 A. Yes, I did.

11:35AM 3 Q. Did he have a concern when he -- when he tried to make
11:35AM 4 those efforts?

11:35AM 5 A. He did.

11:35AM 6 Q. Did he express that concern to you?

11:35AM 7 A. He did.

11:35AM 8 Q. Based on those two situations, did you assess, along with
11:35AM 9 the investigative team, that further efforts to use
11:35AM 10 undercovers was not viable?

11:35AM 11 A. Absolutely.

11:35AM 12 Q. And now, confidential informants, they might have heard
11:35AM 13 the term a little bit, but that is someone who works -- it
11:35AM 14 might be someone who's in trouble, or someone who is getting
11:35AM 15 paid to work for the government, but that's someone who works
11:35AM 16 as an agent of the government and they pretend to be a
11:35AM 17 criminal; is that a summary?

11:35AM 18 A. Yeah.

11:35AM 19 Q. They work confidentially to acquire evidence?

11:35AM 20 A. They work at our direction. Most of them are criminals
11:35AM 21 to start with. But they're at our direction, and employed as
11:35AM 22 a confidential informant to make controlled purchases, or to
11:35AM 23 make recordings, or do those sorts of activities at our
11:35AM 24 direction with our oversight.

11:36AM 25 Q. Now, and you phrased it better than I did, and I

1 apologize for that.

2 With confidential informants, is there -- are there
3 concerns using them in the context of this investigation?

4 A. A number of concerns.

5 Q. Can you list those, please?

6 A. Certainly. I mean, obviously, you're dealing -- I mean,
7 we can't -- we can't authorize an informant to use narcotics.
8 We can't authorize an informant to engage in sex acts for
9 obvious reasons.

10 So particularly, putting an informant into a club, if
11 they've been there routinely and now they're not using
12 cocaine or not using drugs because now they're working for
13 us, you know, that's -- I've had informants say I have to go
14 in there and do a line of coke.

15 Our rules are you can't do that. And then you say, well,
16 that's not -- we're just not going to be able to pursue that
17 particular investigative technique.

18 So a strip club particularly has a lot of things we would
19 have to consider before we started down that road.

20 Q. And pivoting off of that, have back to Angel
21 Benitos-Santos, did he indicate in sum and substance his
22 belief he was unable to purchase cocaine because he wasn't a
23 known commodity in the club?

24 A. He did.

25 Q. Is it sometimes, in addition to the safety and security

1 concerns, is it sometimes a challenge, often a challenge, to
2 get a C.I. with access?

3 A. Absolutely. Usually they're part of the inner group.

4 Q. Is another challenging or complicating factor related to
5 the defendant's relationship with a federal law enforcement
6 agent named Joseph Bongiovanni?

7 A. That was an impediment, certainly.

8 Q. Were there impediments based upon his connections to
9 members of the State police, Buffalo Police Department, and
10 local police agencies?

11 A. Yeah. Mr. Gerace -- the defendant had a lot of
12 relationships with various law enforcement agencies in the
13 Western New York community. And that certainly went into our
14 decision and calculus in deciding how to pursue certain
15 investigative techniques.

16 Q. In Joel Catuzza's investigation, are you aware of the
17 State judge that they went to for a protective order to not
18 disclose the U.C. information?

19 A. I am.

20 Q. Who was that State judge?

21 A. John Michalski.

22 Q. So was trying that again totally off the table?

23 A. Absolutely.

24 Q. Does that mean you can't get a wiretap?

25 A. Correct. Those would be steps that would lead up towards

11:38AM 1 a wiretap, or potentially.

11:38AM 2 Q. Generally, in your experience, is it common when
11:38AM 3 individuals know they are subjects or targets of an
11:38AM 4 investigation to make efforts to ensure that their conduct
11:38AM 5 does not become exposed?

11:38AM 6 A. Absolutely. They move narcotics. Maybe they stop

11:39AM 7 dealing for a period of time. Stop talking with certain
11:39AM 8 associates. Change phone numbers. Those are all things that
11:39AM 9 are very common in investigation, if the subjects feel
11:39AM 10 they're being looked at or they're being investigated.

11:39AM 11 Q. Do they basically change tactics at times?

11:39AM 12 A. Yeah. Or they shut down operations for a while.

11:39AM 13 Q. Is changing phones a problem?

11:39AM 14 A. Yeah, definitely.

11:39AM 15 Q. You mentioned burner phones earlier.

11:39AM 16 A. Correct.

11:39AM 17 Q. Do individuals with experience in the drug trade, in your
11:39AM 18 experience, utilize burner phones?

11:39AM 19 A. Yes, all the time.

11:39AM 20 Q. What are the additional challenges beyond what you've
11:39AM 21 discussed so far when dealing with burner phone?

11:39AM 22 A. Burner phones? They're not your true name. They've
11:39AM 23 limited minutes. You drop them.

11:39AM 24 If you're trying to get up -- using the wiretap analogy,
11:39AM 25 you have to have a period of what we call tolls where we're

11:39AM 1 running phone numbers to see who they're in communication
11:39AM 2 with. So if somebody has a burner for a month, dumps it,
11:39AM 3 gets another one, now we've gotta get up and get the tolls
11:39AM 4 for the new phone, identify the new phone, and then really
11:40AM 5 almost starting over when it comes to figuring out who
11:40AM 6 they're in communication with. And proving that. Because a
11:40AM 7 lot of times, their associates will have burner phones as
11:40AM 8 well.

11:40AM 9 Q. I might ask you more about wiretaps later on, but based
11:40AM 10 on all of the things that an agent has to do to even get to
11:40AM 11 the point of requesting a wiretap, does it often take 30 days
11:40AM 12 or more?

11:40AM 13 A. Absolutely. Yeah.

11:40AM 14 Q. When someone drops a burner phone within 30 days, does
11:40AM 15 that make it a challenge?

11:40AM 16 A. Yeah. You're kind of starting over again, at least with
11:40AM 17 a phone workup.

11:40AM 18 Q. In the context of an investigation where there's an
11:40AM 19 active DEA agent who's able to walk the halls of members of
11:40AM 20 law enforcement's offices, is time of the essence?

11:40AM 21 A. Absolutely.

11:40AM 22 Q. All right. You were asked some questions about DVR
11:40AM 23 footage. I want to ask a couple follow-ups on that.

11:41AM 24 A. Okay.

11:41AM 25 Q. I think Mr. Foti started you with -- I'll call it DVR 1,

11:41AM 1 and we're referencing Exhibit 3539ED. Just a couple of
11:41AM 2 questions about that.

11:41AM 3 **MR. TRIPI:** Can we pull it up and go to page 2.

11:41AM 4 **BY MR. TRIPI:**

11:41AM 5 Q. I'm just going to leave it up there, it's in evidence.
11:41AM 6 You can review it if you need it.

11:41AM 7 A. Certainly.

11:41AM 8 Q. All right? The video footage of DVR 1, that went from
11:41AM 9 October -- October 21st, 2019 to December 11th or 12th of
11:41AM 10 2019, the day of the search, right?

11:41AM 11 A. It did.

11:41AM 12 Q. Okay. All right. Now I want to ask you some questions
11:41AM 13 about things that occurred prior to October 21st, 2019, okay?

11:42AM 14 A. Certainly.

11:42AM 15 Q. Was the defendant's brother's house -- was Anthony
11:42AM 16 Gerace's house searched, and was Anthony Gerace arrested on
11:42AM 17 January 28th, 2019?

11:42AM 18 A. He was.

11:42AM 19 Q. That was before October 21st, 2019?

11:42AM 20 A. Correct.

11:42AM 21 Q. Was the defendant's phone seized and extracted, and
11:42AM 22 ultimately the phone returned to him but the data extracted,
11:42AM 23 on or about April 27th, 2019?

11:42AM 24 A. Yeah. At Newark, as he was entering back into the
11:42AM 25 country.

11:42AM 1 Q. And then Special Agent Ryan testified in more detail
11:42AM 2 about that, correct?

11:42AM 3 A. He did.

11:42AM 4 Q. Was that before October 21st, 2019?

11:42AM 5 A. It was.

11:42AM 6 Q. Was Defendant Bongiovanni's house searched by federal law
11:42AM 7 enforcement on June 6th, 2019, and was evidence recovered?

11:42AM 8 A. It was. And there was evidence recovered.

11:42AM 9 Q. Was that before October 21st, 2019?

11:42AM 10 A. It was.

11:43AM 11 Q. Were searches of Lou Selva and Mike Masecchia's
11:43AM 12 residence, did those occur on August 23rd, 2019?

11:43AM 13 A. They did. I was present at Mr. Masecchia's house.

11:43AM 14 Q. And Masecchia was arrested?

11:43AM 15 A. He was.

11:43AM 16 Q. Did those events occur before October 21st, 2019?

11:43AM 17 A. They did.

11:43AM 18 Q. Did all of those events happen before the seizure of
11:43AM 19 DVR 1?

11:43AM 20 A. They did.

11:43AM 21 Q. Nevertheless, the report that's in evidence, in fairness,
11:43AM 22 you didn't write it, correct?

11:43AM 23 A. Correct.

11:43AM 24 Q. In fairness, there was no observations at that point of
11:43AM 25 oral sex, anal sex, vaginal sex, correct?

11:43AM 1 A. Correct.

11:43AM 2 Q. Nevertheless, the report itself documents fondling,
11:43AM 3 right?

11:43AM 4 A. It does.

11:43AM 5 Q. On various cameras?

11:43AM 6 A. On various cameras.

11:43AM 7 Q. It documents kissing?

11:43AM 8 A. It does.

11:43AM 9 Q. It documents grinding?

11:43AM 10 A. It does.

11:43AM 11 Q. It documents erect penises?

11:43AM 12 A. It does.

11:44AM 13 Q. And all of those things occurred after the defendant
11:44AM 14 would have been on notice that he was under some type of
11:44AM 15 investigation; is that fair?

11:44AM 16 A. Absolutely.

11:44AM 17 Q. In your view, and I'm not trying to be critical, but
11:44AM 18 would you have written that sentence, "there's no relevant
11:44AM 19 information," in the context of a sex-trafficking case where
11:44AM 20 there's fondling, kissing, grinding, and erect penises?

11:44AM 21 A. I would not have. I was little more familiar with the
11:44AM 22 sex-trafficking aspects of the investigation, and from
11:44AM 23 interviewing so many of the dancers.

11:44AM 24 Q. Okay. I can go through camera by camera, but I do want
11:44AM 25 to focus on one that's in this report.

11:44AM 1 Let's go to the last page of this report. Again, when I
11:44AM 2 say "this report," we're dealing in Exhibit 3539ED.

11:45AM 3 What was recorded for camera 8?

11:45AM 4 A. No video was recorded. It was, as I recall, unable to be
11:45AM 5 recovered or wasn't working.

11:45AM 6 Q. Well, what's it say?

11:45AM 7 A. It says no video recorded.

11:45AM 8 Q. Okay. Have you heard testimony at this trial about there
11:45AM 9 being certain blind spots in Pharaoh's?

11:45AM 10 A. Yes, I heard that testimony.

11:45AM 11 Q. If a camera has no video, is that consistent with a blind
11:45AM 12 spot?

11:45AM 13 A. Absolutely.

11:45AM 14 **MR. TRIPI:** All right. You can take that one down.

11:45AM 15 **THE WITNESS:** And the report indicates there were
11:45AM 16 blind spots.

11:45AM 17 **BY MR. TRIPI:**

11:45AM 18 Q. I'm sorry, does the report indicate there were blind
11:45AM 19 spots?

11:45AM 20 A. It does.

11:45AM 21 Q. What does it say in that regard?

11:45AM 22 A. If you can bring it back up.

11:45AM 23 **MR. TRIPI:** Yeah, sure. Direct us to 3539ED.

11:45AM 24 **BY MR. TRIPI:**

11:45AM 25 Q. And where are you referencing?

11:45AM 1 A. I think it was the first page. This might be the other
11:45AM 2 report.

11:45AM 3 Q. Oh, yeah. Let's go to page 2. The last sentence there,
11:46AM 4 is that where you were looking?

11:46AM 5 A. That's what I was referring to.

11:46AM 6 Q. What's it say?

11:46AM 7 A. There are some areas in the VIP section that are not
11:46AM 8 covered by these camera angles, and therefore not seen on the
11:46AM 9 recordings.

11:46AM 10 Q. Okay. I'd like to move on now and just ask you a few
11:46AM 11 more questions. And I think I'm encompassing all of the DVRs
11:46AM 12 at this point. Well, let's stick to DVR 1 for a second.

11:46AM 13 None of those cameras showed, in terms of, showed the
11:46AM 14 dressing room, right?

11:46AM 15 A. Correct.

11:46AM 16 Q. None of them showed the bathroom?

11:46AM 17 A. Correct.

11:46AM 18 Q. None of the DVRs whatsoever showed any views of the
11:46AM 19 upstairs; is that right?

11:46AM 20 A. Correct. That's what I recall.

11:46AM 21 Q. There's been a lot of testimony about what happened
11:46AM 22 upstairs at Pharaoh's; fair to say?

11:46AM 23 A. There was.

11:46AM 24 **MR. TRIPPI:** Okay. Now we move on to Exhibit 3539EE.
11:47AM 25 We can publish that.

11:47AM 1 BY MR. TRIPI:

11:47AM 2 Q. This exhibit, the range of the cameras in this exhibit is

11:47AM 3 even shorter than DVR 1, this deals with DVR 2; is that

11:47AM 4 right?

11:47AM 5 A. That's correct.

11:47AM 6 Q. And the range here, I think Mr. Foti covered it, but was

11:47AM 7 November 28th, 2019 to December 12th, 2019; is that right?

11:47AM 8 December 11th or 12th?

11:47AM 9 A. 11/28 -- yeah, exactly, to December 11th and 12th,

11:47AM 10 depending on the camera.

11:47AM 11 Q. Okay. I don't want to be too repetitive. But all those

11:47AM 12 questions that I asked you about Anthony Gerace's arrest, the

11:47AM 13 seizure of the defendant's phone, the search at Bongiovanni,

11:47AM 14 the -- the searches at Masecchia and Selva's residence, and

11:47AM 15 Masecchia's arrest, all of those same answers apply here:

11:47AM 16 Those all happened before the very first moment of video

11:47AM 17 coverage; is that right?

11:47AM 18 A. That's correct.

11:47AM 19 Q. Additionally, by this point in time, by November 28th,

11:48AM 20 2019, an additional thing happened as it relates to Joseph

11:48AM 21 Bongiovanni; is that right?

11:48AM 22 A. That's correct.

11:48AM 23 Q. By that point, was he charged?

11:48AM 24 A. Yeah. He was indicted, and the indictment was unsealed.

11:48AM 25 Q. So that means it was public?

11:48AM 1 A. It was public.

11:48AM 2 Q. And I asked you on direct, but there was a lot of media
11:48AM 3 coverage associated with that event?

11:48AM 4 A. A pretty extensive amount.

11:48AM 5 Q. Okay. I'd like to go to the same exhibit and ask you a
11:48AM 6 question about camera 20. Now, again, I'm not being
11:48AM 7 critical, but you didn't write this report, right?

11:48AM 8 A. I did not.

11:48AM 9 Q. Okay. What does camera 20 say? Can you read it for the
11:48AM 10 jury?

11:48AM 11 A. The whole thing? Located in the PGC office, video
11:48AM 12 footage from 11/28/2019 at 8:54:19 to 12/12/2019 10:29:39.

11:48AM 13 Camera 20 contains no relevant information. Camera 20

11:49AM 14 generally shows employees such as Peter Gerace Jr., Peter
11:49AM 15 Gerace Sr., Anthony Gerace, John Ermin a/k/a Tommy O, Nick
11:49AM 16 Ciechalski, and the others doing typical office work.

11:49AM 17 Q. So the defendant, his brother Anthony, and Tommy O the
11:49AM 18 Outlaws leader are on camera at the club in the office?

11:49AM 19 A. In the office.

11:49AM 20 Q. And we've heard testimony about -- at this trial from
11:49AM 21 witnesses about the first floor office; is that right?

11:49AM 22 A. That's correct.

11:49AM 23 **MR. TRIPI:** We can take that down.

11:49AM 24 **BY MR. TRIPI:**

11:49AM 25 Q. As to 3539EE, none of those cameras covered the upstairs,

11:49AM 1 correct?

11:49AM 2 A. That's correct.

11:49AM 3 Q. None of those cameras covered the dressing rooms or the
11:49AM 4 bathrooms, correct?

11:49AM 5 A. That's correct.

11:49AM 6 Q. All right.

11:49AM 7 **MR. TRIPI:** Let's move on to 3539EF.

11:49AM 8 **BY MR. TRIPI:**

11:50AM 9 Q. And this deals with DVR 3 that you were questioned about?

11:50AM 10 A. Yes, it does.

11:50AM 11 **MR. TRIPI:** Let's go to page 2, Ms. Champoux.

11:50AM 12 **BY MR. TRIPI:**

11:50AM 13 Q. The range on this DVR was November 13th to December 12th,
11:50AM 14 2019, and it showed seven cameras; is that right?

11:50AM 15 A. Yeah. 11 -- what was the date range?

11:50AM 16 Q. Oh, maybe I got it wrong.

11:50AM 17 There was a camera that showed November 30th to

11:50AM 18 December 12th; is that right?

11:50AM 19 A. That's correct.

11:50AM 20 Q. That's the range on this DVR?

11:50AM 21 A. Correct.

11:50AM 22 Q. Okay. Again, all of those events regarding Anthony
11:50AM 23 Gerace, the defendant's phone being seized at the border,
11:50AM 24 Mike Masecchia, Lou Selva, Joe Bongiovanni's search, all
11:50AM 25 happened before the first moment of footage on this DVR,

11:50AM 1 correct?

11:50AM 2 A. Correct.

11:50AM 3 Q. In addition to that, Joseph Bongiovanni's arrest and
11:50AM 4 unsealing of his indictment occurred before the first moment
11:51AM 5 of footage on this DVR?

11:51AM 6 A. It did.

11:51AM 7 Q. Now, just in terms of notice, when Mr. Bongiovanni's
11:51AM 8 indictment was unsealed, was there a paragraph in it publicly
11:51AM 9 available that referred to a stripper overdose at a
11:51AM 10 gentleman's club operated by Coconspirator 1 in Cheektowaga,
11:51AM 11 New York, and that Bongiovanni advised Coconspirator 1 to get
11:51AM 12 her out of the gentleman's club?

11:51AM 13 A. That language was in the indictment.

11:51AM 14 Q. So that was publicly available to anyone that would have
11:51AM 15 read the indictment?

11:51AM 16 A. It was.

11:51AM 17 Q. And I think we established on direct, Coconspirator 1 at
11:51AM 18 that time was a reference to the defendant?

11:51AM 19 A. Correct. He was not charged at that point, so you
11:51AM 20 wouldn't utilize his name.

11:51AM 21 Q. Did you do a lot more interviews pertaining to the
11:51AM 22 defendant after Bongiovanni was charged?

11:51AM 23 A. Yes. Significant.

11:51AM 24 Q. Or caused them to be done by others?

11:52AM 25 A. Yeah, a significant amount of work went in after that.

11:52AM 1 Q. All right. So, were investigative leaks a concern and
11:52AM 2 challenge in this investigation?

11:52AM 3 A. Definitely.

11:52AM 4 Q. Explain why.

11:52AM 5 A. Because of Mr. Gerace's contacts in law enforcement, it
11:52AM 6 was always in the back of our minds, you know, looking at all
11:52AM 7 the associates he had, and all the associated law enforcement
11:52AM 8 members from Western New York, the different departments,
11:52AM 9 obviously the Bongiovanni piece, it was -- it was a serious
11:52AM 10 concern in this investigation.

11:52AM 11 Q. Are there members of the State police who work on FBI
11:52AM 12 task forces?

11:52AM 13 A. They are.

11:52AM 14 Q. Do some of them work in this case?

11:52AM 15 A. Some do, yes.

11:52AM 16 Q. Is there a -- is there a concern if they are just talking
11:52AM 17 in their office space amongst each other, and someone they
11:52AM 18 don't know has a connection to a target overhears it, was
11:52AM 19 that a concern?

11:52AM 20 A. That's a concern. I will say the -- the agents on our --
11:53AM 21 or, the officers on our task force are well vetted, and we
11:53AM 22 certainly made a point to -- to clue them in on, you know,
11:53AM 23 our concerns and that sort of thing.

11:53AM 24 Q. HSI had task force officers as well, right?

11:53AM 25 A. Absolutely.

11:53AM 1 Q. In other words, in an investigation like this, with this
11:53AM 2 many law enforcement contacts, at the outset do you know
11:53AM 3 everything and every contact and every communication?

11:53AM 4 A. Not even close.

11:53AM 5 Q. Does that make it a major concern?

11:53AM 6 A. Major concern. Especially on the larger, like on the
11:53AM 7 search warrant executions. You have to, by design, you need
11:53AM 8 to have marked units, so that expands the number of people
11:53AM 9 involved. You need to --

11:53AM 10 Q. What do you mean by a marked unit?

11:53AM 11 A. I'm sorry. Patrol car with lights. For safety reasons
11:53AM 12 we always, at search warrants almost always, sometimes you
11:53AM 13 can get permission not to, but you want a marked unit there.
11:53AM 14 So the place you're searching, the individuals in the
11:53AM 15 residence or business, realize that this is law enforcement
11:53AM 16 action, and not maybe another drug dealer robbing them.

11:54AM 17 So that was a big concern. You just, by its nature, you
11:54AM 18 have to expand the people in the know, so to speak, including
11:54AM 19 supervisors and bosses.

11:54AM 20 So search warrants are -- were a big concern when you
11:54AM 21 have to execute those.

11:54AM 22 Q. How many former Buffalo police commissioners did the
11:54AM 23 defendant have some type of a relationship with?

11:54AM 24 A. Two.

11:54AM 25 Q. How many New York State police officers did he have some

1 type of relationship with?

2 A. Going -- I think it was five at least, or possibly four.

3 A number of them.

4 Q. You're estimating?

5 A. I'm estimating. I would need my records.

6 Q. How many other local officers did he have some type of

7 relationship? And by "local," I mean town, Cheektowaga,

8 Amherst, wherever.

9 A. Looking at his contacts, and then based on some of our
10 investigative efforts, it was -- it would say 12 to 15.

11 Again, I'd need my records before I would lock in to solid
12 numbers.

13 Q. As you sit here today, do you know the full extent of
14 everybody he knew?

15 A. No, I do not.

16 **MR. TRIPI:** Can we pull up Exhibit 100A.1-1?

17 **BY MR. TRIPI:**

18 Q. All right. I don't remember want to spend a ton of time

19 on this, but on direct you referenced how this is a DARTS

20 deconfliction email notice, and it has a reference of Paul

21 Francoforte's phone number, and a reference to a number in

22 contact with Anthony Gerace; do you remember that?

23 A. That's correct, yes.

24 Q. Would this document have given Joe Bongiovanni notice --

25 A. Absolutely.

11:55AM 1 Q. -- as a DEA agent of whether or not Anthony Gerace or
11:55AM 2 Paul Francoforte were on a wiretap?

11:55AM 3 A. It would on a wiretap, yes.

11:55AM 4 Q. Okay.

11:55AM 5 A. Not --

11:55AM 6 Q. Okay.

11:55AM 7 A. Yeah.

11:55AM 8 Q. That's a yes?

11:55AM 9 A. That's a yes.

11:55AM 10 Q. If Anthony Gerace's phone is tapped, just explain the
11:56AM 11 basics of a wiretap. If Anthony Gerace's phone is tapped,
11:56AM 12 and the defendant were in contact with him, would that
11:56AM 13 communication be captured by a wire?

11:56AM 14 A. Yeah. A wiretap, you get all the calls coming in and
11:56AM 15 out.

11:56AM 16 Q. So does Bongiovanni having notice of whether Anthony
11:56AM 17 Gerace's phone provides some insight as to whether this
11:56AM 18 defendant might be on a wiretap?

11:56AM 19 A. It does.

11:56AM 20 Q. And this document specifically indicates there's no
11:56AM 21 wiretaps on them?

11:56AM 22 A. Correct.

11:56AM 23 Q. Okay.

11:56AM 24 **MR. TRIPPI:** You can take that down.

11:56AM 25 Can we pull up Exhibit 100A.1-2?

11:56AM
1**BY MR. TRIPPI:**

11:56AM
2 Q. I don't want to spend a lot of time on this, but this is
11:57AM 3 the OCDETF report for Operation Past Due related to Frank
11:57AM 4 Tripi; is that correct?

11:57AM
5 A. It is.

11:57AM
6 Q. You've been trained by the FBI?

11:57AM
7 A. Yes, I have.

11:57AM
8 Q. You've worked cases with the DEA agents?

11:57AM
9 A. Yes.

11:57AM
10 Q. You've worked cases with ATF?

11:57AM
11 A. Certainly have.

11:57AM
12 Q. You've worked cases with IRS?

11:57AM
13 A. I have.

11:57AM
14 Q. You've worked cases with New York State Police?

11:57AM
15 A. I have.

11:57AM
16 Q. You've worked cases with the Buffalo Police Department?

11:57AM
17 A. Yep.

11:57AM
18 Q. Other local agencies, as well?

11:57AM
19 A. Yeah. Quite a few.

11:57AM
20 Q. You've had conversations with other members of law

11:57AM
21 enforcement generally in your career?

11:57AM
22 A. Oh, yeah, lots.

11:57AM
23 Q. Based upon all of your training and experience, and all

11:57AM
24 of your contacts and communications over the years with other

11:57AM
25 experienced members of law enforcement, I should say you've

11:57AM 1 worked with HSI?

11:57AM 2 A. Yes, I missed that one.

11:57AM 3 Q. Is there any legitimate law enforcement purpose for a

11:57AM 4 retired agent to have a draft OCDETF report that's

11:58AM 5 law-enforcement sensitive in their residence at retirement?

11:58AM 6 A. Absolutely not.

11:58AM 7 **MR. TRIPPI:** We can take that down.

11:58AM 8 **BY MR. TRIPPI:**

11:58AM 9 Q. Okay. I've covered a lot earlier about the investigative

11:58AM 10 technique of a wiretap, so I'm not going to spend a lot more

11:58AM 11 time asking those questions over again. But I do want to

11:58AM 12 play you Government Exhibit 311 in the context of you being

11:58AM 13 asked about whether a wiretap was viable or feasible. I want

11:58AM 14 to play that for you.

11:58AM 15 A. Okay.

11:58AM 16 Q. And ask you some questions, okay?

11:58AM 17 **MR. TRIPPI:** Can we play Government Exhibit 311,

11:58AM 18 please?

11:58AM 19 I don't think we have audio. Stop it, please, I need

11:59AM 20 the audio up more.

11:59AM 21 (Audio was played.)

11:59AM 22 **BY MR. TRIPPI:**

11:59AM 23 Q. Does the defendant mention drugs in the recording?

11:59AM 24 A. He does.

11:59AM 25 Q. Does the defendant mention TracFones?

11:59AM 1 A. He does.

11:59AM 2 Q. In your experience, is a TracFone a common burner phone?

11:59AM 3 A. Yeah. A TracFone, burner phone, interchangeable.

11:59AM 4 Q. It's a prepaid phone that is often disposed of?

11:59AM 5 A. Correct, And not in your name.

11:59AM 6 Q. And we looked at it earlier, did Joseph Bongiovanni

12:00PM 7 respond to that message?

12:00PM 8 A. He did.

12:00PM 9 Q. And was that all after about a year or so after Anthony

12:00PM 10 Casullo and Mr. Bongiovanni had that exchange inside the DEA

12:00PM 11 office?

12:00PM 12 A. It was.

12:00PM 13 Q. So explain now why a wiretap was not feasible in this

12:00PM 14 case.

12:00PM 15 A. Certainly. I mean, having access to a -- an active DEA

12:00PM 16 agent who could check files, who could provide information on

12:00PM 17 law enforcement techniques, that would, I -- I think preclude

12:00PM 18 realistically pursuing a wiretap in this case.

12:00PM 19 Q. Okay. We talked earlier now about informants, right?

12:00PM 20 A. Correct.

12:00PM 21 Q. And we talked about challenges of getting an informant

12:00PM 22 into Pharaoh's; is that right?

12:00PM 23 A. We did.

12:00PM 24 Q. Did part of the investigation into Bongiovanni also

12:00PM 25 relate to him passing along the identities of informants to

12:00PM 1 individuals like Lou Selva?

12:00PM 2 A. It did.

12:00PM 3 Q. Did that concern take this technique completely off the
12:01PM 4 table?

12:01PM 5 A. Yeah. The factors -- that, and the other factors in this
12:01PM 6 case, it was not viable. This was not a case for a wiretap.

12:01PM 7 Q. And is that based on all of your experience?

12:01PM 8 A. Yes.

12:01PM 9 Q. Is that based on all of the experience of all the trained
12:01PM 10 agents that worked on this case with you?

12:01PM 11 A. Yeah, in consultation with the prosecutors.

12:01PM 12 Q. When you do investigations and when you put a case
12:01PM 13 together, do you tailor the techniques that you utilize to a
12:01PM 14 particular case you're dealing with?

12:01PM 15 A. Yes. Most cases are -- all cases have different factors
12:01PM 16 that you have to consider when you're coming up with
12:01PM 17 strategies and investigative techniques you're gonna pursue
12:01PM 18 or attempt.

12:01PM 19 Q. Is that what was done in this case?

12:01PM 20 A. Absolutely.

12:01PM 21 Q. Now, you were asked earlier on cross if you reviewed a
12:01PM 22 report of the defendant engaged in drug transactions, I think
12:02PM 23 that was the question.

12:02PM 24 Did you conduct numerous interviews and have interviews
12:02PM 25 conducted of numerous witnesses who reported the defendant

12:02PM 1 engaged in drug transactions?

12:02PM 2 A. Yeah, a large number of witnesses.

12:02PM 3 Q. Did you interview witnesses and have witnesses
12:02PM 4 interviewed who reported and testified in this trial about
12:02PM 5 sex acts committed at Pharaoh's and with this defendant?

12:02PM 6 A. We did. Or I did, I guess.

12:02PM 7 Q. You were asked some questions about whether there was
12:02PM 8 drug paraphernalia inside Pharaoh's on December 12th, 2019.

12:02PM 9 **MR. TRIPI:** Ms. Champoux, can we pull up just briefly
12:02PM 10 Exhibit 235A-110.

12:03PM 11 **BY MR. TRIPI:**

12:03PM 12 Q. Okay. Now this is a photo from the search of Pharaoh's;
12:03PM 13 is that right?

12:03PM 14 A. That's correct.

12:03PM 15 Q. Do you see some drug-related evidence in this photo?

12:03PM 16 A. Yeah. Appears to be a couple blunts.

12:03PM 17 Q. Is a blunt basically a marijuana-wrapped cigarette?

12:03PM 18 A. Yeah, a cigar, cigarette.

12:03PM 19 **MR. TRIPI:** Let's go to 235A-A119.

12:03PM 20 **BY MR. TRIPI:**

12:03PM 21 Q. On December -- what's depicted in this photo?

12:03PM 22 A. Appears to be some paraphernalia. Pipes.

12:03PM 23 Q. Some type of smoking device?

12:03PM 24 A. Yeah, that's what it appears to be. I would have to see
12:03PM 25 it physically to say definitively.

12:03PM 1 Q. Based on your experience, does it look like a smoking
12:03PM 2 device?

12:03PM 3 A. It does, it looks like paraphernalia.

12:03PM 4 Q. Is that why it was photographed?

12:03PM 5 A. Yes.

12:03PM 6 Q. Is that some evidence of drug paraphernalia at Pharaoh's?

12:03PM 7 A. Some evidence, yes.

12:04PM 8 **MR. TRIPI:** Let's show Exhibit 235A-A115.

12:04PM 9 **BY MR. TRIPI:**

12:04PM 10 Q. I think Special Agent Ryan testified about this earlier,
12:04PM 11 but what does that look like?

12:04PM 12 A. Could be, like, hash oil possibly or --

12:04PM 13 Q. Does it appear to be some type of THC product?

12:04PM 14 A. Yeah, it does.

12:04PM 15 Q. Is that some evidence of drug evidence at Pharaoh's?

12:04PM 16 A. It is.

12:04PM 17 Q. Okay. And this was all after all of those events we

12:04PM 18 talked about, and after Mr. Bongiovanni was already charged;

12:04PM 19 is that right?

12:04PM 20 A. That's correct.

12:04PM 21 **MR. TRIPI:** Okay. All right. Can we pull up
12:04PM 22 Exhibit 555 on the screen?

12:04PM 23 **THE COURT:** Mr. Tripi, we've been going almost an
12:04PM 24 hour.

12:04PM 25 **MR. TRIPI:** I'm in my last section, I don't know, do

12:04PM 1 you want to break now, Judge?

12:04PM 2 **THE COURT:** Well, no, I don't want to break now, but
12:04PM 3 we've got things that we have to do at 12:30, I think you
12:04PM 4 know, and just --

12:04PM 5 **MR. TRIPI:** I'm almost done.

12:04PM 6 **THE COURT:** Okay.

12:04PM 7 **MR. TRIPI:** We're in the last -- the home stretch.

12:05PM 8 **THE COURT:** All right.

12:05PM 9 **BY MR. TRIPI:**

12:05PM 10 Q. You were asked about the timeframe of the cameras and all
12:05PM 11 that; do you remember that?

12:05PM 12 A. I do.

12:05PM 13 Q. Based on the duration that each individual was employed
12:05PM 14 at Pharaoh's, I'm going to ask the same questions.

12:05PM 15 The earliest footage from Pharaoh's is from October 21st,
12:05PM 16 2019; is that right?

12:05PM 17 A. That's correct.

12:05PM 18 Q. Would that have captured anything that occurred with
12:05PM 19 L.L.?

12:05PM 20 A. It would not.

12:05PM 21 Q. Would that have captured anything that occurred with
12:05PM 22 A.A.?

12:05PM 23 A. Would not.

12:05PM 24 Q. Would that have captured anything that occurred with
12:05PM 25 K.A.?

12:05PM 1 A. Would not.

12:05PM 2 Q. Would that have captured anything that occurred with
12:05PM 3 P.H.?

12:05PM 4 A. In '19, she did reconnect with -- no, it would not.

12:05PM 5 Q. October, right?

12:05PM 6 A. October, right.

12:05PM 7 Q. Would that have captured anything that occurred with Matt
12:05PM 8 Albert?

12:05PM 9 A. Nope.

12:05PM 10 Q. Would that have captured anything related to the car stop
12:05PM 11 of Charm that Joseph Krywalski talked about?

12:05PM 12 A. Would not.

12:05PM 13 Q. Would that have captured anything related to Jeff
12:06PM 14 Anzalone's testimony?

12:06PM 15 A. Would not.

12:06PM 16 Q. Would that have captured anything related to K.L.'s
12:06PM 17 testimony?

12:06PM 18 A. Would not.

12:06PM 19 Q. Would that have captured anything related to A.A.'s
12:06PM 20 testimony?

12:06PM 21 A. Would not.

12:06PM 22 Q. Would that have captured anything related to John
12:06PM 23 McDonald's testimony?

12:06PM 24 A. Would not.

12:06PM 25 Q. Would that have captured anything related to C.B.'s

12:06PM 1 testimony?

12:06PM 2 A. Would not.

12:06PM 3 Q. Would that have captured anything related to K.M.'s
12:06PM 4 testimony, with her testimony related to the house, at
12:06PM 5 Pharaoh's, and a comment that Mr. Gerace made?

12:06PM 6 A. It would not.

12:06PM 7 Q. Would it have captured anything related to Kevin Myszka's
12:06PM 8 testimony?

12:06PM 9 A. Would not.

12:06PM 10 Q. Anything related to A.B.'s testimony in this trial?

12:06PM 11 A. Would not.

12:06PM 12 Q. Would that have captured anything related to Katrina
12:06PM 13 Nigro's testimony?

12:06PM 14 A. Nope.

12:06PM 15 Q. How about J.C.?

12:06PM 16 A. Would not.

12:06PM 17 Q. How about A.P.?

12:06PM 18 A. Would not.

12:06PM 19 Q. How about A.G.?

12:06PM 20 A. Would not.

12:06PM 21 Q. How about G.R.?

12:06PM 22 A. Would not.

12:06PM 23 Q. How about E.H.? She worked there in 2014, right?

12:06PM 24 A. Correct.

12:06PM 25 Q. How about J.Z.?

12:06PM 1 A. Would not.

12:06PM 2 Q. How about C.H.?

12:06PM 3 A. She's possibly there in '19.

12:06PM 4 Q. Okay. How about R.W.?

12:07PM 5 A. Would not.

12:07PM 6 Q. How about C.C.?

12:07PM 7 A. Would not.

12:07PM 8 Q. How about Doug Augustyniak?

12:07PM 9 A. He's gone by then.

12:07PM 10 Q. Yep. Withdrawn, I didn't mean to say yep.

12:07PM 11 How about the conduct between Anthony Casullo and Joseph

12:07PM 12 Bongiovanni at DEA?

12:07PM 13 A. Correct, it would not.

12:07PM 14 Q. How about investigative activities by Special Agent Ryan?

12:07PM 15 A. Would not.

12:07PM 16 Q. How about the events between Craig Border, R.A. and --

12:07PM 17 pertaining to the defendant in 2005?

12:07PM 18 A. Would not.

12:07PM 19 Q. How about the cold approach related to Chris Wisniewski?

12:07PM 20 A. Would not.

12:07PM 21 Q. How about any of the events of 2009 related to Exhibit

12:07PM 22 30A and the 2009 probation search and FBI meeting with

12:07PM 23 Bongiovanni?

12:07PM 24 A. It would not.

12:07PM 25 Q. Okay. So none of the camera footage from October 21st,

12:07PM 1 2019 or later undermines anything anyone talked about; is
12:07PM 2 that right?

12:07PM 3 A. Correct.

12:07PM 4 Q. All right.

12:07PM 5 **MR. TRIPI:** Nothing further, Judge.

12:08PM 6 **THE COURT:** Mr. Foti?

12:08PM 7

12:08PM 8 **RECROSS-EXAMINATION BY MR. FOTI:**

12:08PM 9 Q. Okay. On redirect, you were asked about assessing the
12:08PM 10 forthcomingness and credibility of individuals that were
12:08PM 11 interviewed, correct?

12:08PM 12 A. Correct.

12:08PM 13 Q. You were asked about a number of individuals who were
12:08PM 14 interviewed, but ultimately did not testify in this trial?

12:08PM 15 A. That's correct.

12:08PM 16 Q. And you were specifically asked questions about specific
12:08PM 17 names and whether you found what the information they gave
12:08PM 18 you to be credible or not, correct?

12:08PM 19 A. Forthcoming I think was the question.

12:08PM 20 Q. Forthcoming, and you assessed -- well -- well, to the
12:08PM 21 extent that the question was about whether they were
12:08PM 22 forthcoming or not, Michelle Sercu answered questions about
12:08PM 23 Pharaoh's, correct?

12:08PM 24 A. Yeah, that one I wasn't as familiar with, but yes, she
12:09PM 25 answered questions about Pharaoh's.

12:09PM 1 Q. And by the time she was interviewed, she had become a
12:09PM 2 night manager, correct?

12:09PM 3 A. I believe that, as I mentioned on my -- in my cross,
12:09PM 4 I -- I don't remember that one as well.

12:09PM 5 Q. Okay. And in terms of Michelle Sercu, she provided
12:09PM 6 information that drugs and prostitution was not tolerated?

12:09PM 7 **MR. TRIPI:** Objection.

12:09PM 8 **THE COURT:** Basis?

12:09PM 9 **MR. TRIPI:** Hearsay.

12:09PM 10 **THE COURT:** Overruled.

12:09PM 11 **THE WITNESS:** I would need to -- I would just need to
12:09PM 12 read the report to say definitively, Mr. Foti.

12:09PM 13 **BY MR. FOTI:**

12:09PM 14 Q. Okay. To the extent that you said on redirect that she
12:09PM 15 was not forthcoming, you do agree that she was answering
12:09PM 16 questions about drugs and prostitution?

12:09PM 17 **MR. TRIPI:** Objection to the extent it
12:09PM 18 mischaracterizes her testimony. I didn't ask whether she was
12:09PM 19 forthcoming or not with respect to that person, so --

12:09PM 20 **THE COURT:** Overruled.

12:09PM 21 **BY MR. FOTI:**

12:09PM 22 Q. To the extent you were asked about Ms. Sercu at all, you
12:09PM 23 had indicated you were aware that she had been interviewed,
12:09PM 24 correct?

12:09PM 25 A. Correct.

12:09PM 1 Q. And you were aware that she indicated there was no drugs
12:09PM 2 and prostitution in the club, correct?

12:09PM 3 A. Which is completely contradictory to all the evidence we
12:10PM 4 gathered to that point.

12:10PM 5 Q. When you're talking about assessing credibility, you're
12:10PM 6 talking about a decision of whether they're providing
12:10PM 7 information consistent with the narrative that is developing
12:10PM 8 as part of your investigation?

12:10PM 9 A. I disagree with the term "narrative." I mean, we follow
12:10PM 10 evidence.

12:10PM 11 Q. Well, you specifically gave an example of something
12:10PM 12 Robert Reed said during his interview that you found not to
12:10PM 13 be credible as part of his interview, correct?

12:10PM 14 A. Correct.

12:10PM 15 Q. And he wasn't the only one who told you that there was no
12:10PM 16 drugs in the club, correct?

12:10PM 17 A. Yeah, there was some of the people that said that.

12:10PM 18 Q. You talked about, on redirect, the interview -- you
12:10PM 19 recall there was an interview of D.P., correct?

12:10PM 20 A. Correct.

12:10PM 21 Q. And she was also somebody who indicated drugs are not
12:10PM 22 tolerated in the club, correct?

12:10PM 23 A. Correct.

12:10PM 24 Q. And sex acts are not tolerated in the club?

12:10PM 25 A. Correct.

12:10PM 1 Q. She said if you get caught doing a sex act, you would be
12:10PM 2 fired, correct?

12:10PM 3 A. Without having a report in front of me, I --

12:10PM 4 Q. No reason to disagree with me?

12:10PM 5 A. No reason to disagree. I agree with that.

12:10PM 6 Q. You were asked about Megan Stabler --

12:10PM 7 **MR. TRIPI:** Judge, I have hearsay objections.

12:10PM 8 **THE COURT:** Overruled.

12:11PM 9 **BY MR. FOTI:**

12:11PM 10 Q. You were asked about Megan Stabler on redirect, correct?

12:11PM 11 A. I was.

12:11PM 12 Q. And you made assessments about whether you believed what
12:11PM 13 she had -- the information that she had to offer, correct?

12:11PM 14 A. Correct.

12:11PM 15 Q. The information she had to offer was sex acts are not
12:11PM 16 allowed in the club, correct?

12:11PM 17 A. I -- I'd have to see the report on that one.

12:11PM 18 Q. Well, you have no reason to disagree with that, right?

12:11PM 19 A. I don't have a reason to disagree --

12:11PM 20 Q. Okay.

12:11PM 21 A. -- with you on that, Mr. Foti.

12:11PM 22 Q. You have no reason to disagree that Megan Stabler
12:11PM 23 provided information that if you got caught engaging in sex
12:11PM 24 acts, you would be fired, correct?

12:11PM 25 A. She may have said that. I mean, that's contradictory to

12:11PM 1 all the evidence that we've gathered in this case.

12:11PM 2 Q. It's not contradictory to the other individuals that I
12:11PM 3 just asked about interviewing, correct?

12:11PM 4 A. It appeared that there were certain individuals who were
12:11PM 5 still very loyal to Mr. Gerace, that worked there, and that
12:11PM 6 went into our decision of whether they were forthcoming or
12:11PM 7 not.

12:11PM 8 Q. So -- okay. Well, there's a number of people you
12:11PM 9 interviewed that were still working there, and the
12:11PM 10 individuals I just asked about except for Ms. Sercu were not
12:11PM 11 working there anymore, correct?

12:11PM 12 A. Pericak might have.

12:11PM 13 Q. Maybe I'm wrong. Let me ask you about this. You talked
12:11PM 14 about -- you were asked about on redirect Angela Dingleday,
12:12PM 15 correct?

12:12PM 16 A. Correct.

12:12PM 17 Q. That was somebody who was interviewed, correct?

12:12PM 18 A. It was.

12:12PM 19 Q. And she was a dancer being terminated for being caught
12:12PM 20 with Xanax, correct?

12:12PM 21 A. I'm trying to recall that one. I know she -- it
12:12PM 22 definitely -- I don't have reason to disagree with you on
12:12PM 23 that. I will say it was clear that Mr. Gerace was still
12:12PM 24 present in her life and involved --

12:12PM 25 Q. You're --

12:12PM 1 A. -- helping her.

12:12PM 2 Q. Oh, to the extent that Mr. Gerace was helping her, she
12:12PM 3 wasn't working at Pharaoh's anymore, correct?

12:12PM 4 A. Yeah. I think he -- he bailed her out of some charges,
12:12PM 5 assaulting a police officer in Tennessee or something. I'm
12:12PM 6 going from memory. So --

12:12PM 7 Q. So Mr. Gerace is maintaining a relationship with her, but
12:12PM 8 he's not allowing her to work at the club because she was
12:12PM 9 caught with Xanax?

12:12PM 10 **MR. TRIPI:** Objection as to what Mr. Gerace was
12:12PM 11 doing.

12:12PM 12 **THE COURT:** Overruled.

12:12PM 13 Folks, I am overruling these objections, and -- and
12:12PM 14 the testimony is not coming in for the truth of it, it's
12:12PM 15 coming in with respect to this witness's credibility and --
12:13PM 16 and his assessment of what he said about his assessment of the
12:13PM 17 veracity of these people and why they weren't followed up
12:13PM 18 with. Okay? So that's why it's being admitted. It's not
12:13PM 19 being admitted for the truth of the statements that were made.

12:13PM 20 Go ahead. Keep going.

12:13PM 21 **BY MR. FOTI:**

12:13PM 22 Q. You talked about on redirect interviewing Russell
12:13PM 23 Salvatore, correct?

12:13PM 24 A. That's correct.

12:13PM 25 Q. And he made what maybe was an obnoxious statement about

12:13PM 1 he wouldn't need a prostitute because he's the owner of a
12:13PM 2 restaurant and he's popular with women or something like
12:13PM 3 that?

12:13PM 4 A. Yeah, I think he said -- it related to he could help
12:13PM 5 them -- put -- give them better tables for, I guess, parties.
12:13PM 6 And a waitress would get a better station, maybe a better
12:13PM 7 assignment and make more money. That was the context of that
12:13PM 8 statement about everyone wants to be with the boss.

12:13PM 9 Q. The initial context of statement is he said I've never
12:13PM 10 hired a prostitute from Mr. Gerace, correct?

12:13PM 11 A. Correct.

12:13PM 12 Q. And without pulling back up 555 again, there's pictures
12:14PM 13 of Mr. Gerace with a number of individuals over the course of
12:14PM 14 a 15-year span, correct?

12:14PM 15 A. Correct.

12:14PM 16 Q. That have been offered at this trial, right?

12:14PM 17 A. Yes, sir.

12:14PM 18 Q. And there's a picture of Mr. Gerace with a number of
12:14PM 19 individuals in the kitchen when he went to Pharaoh's at some
12:14PM 20 point, correct?

12:14PM 21 A. Correct.

12:14PM 22 Q. There's no pictures of Mr. Gerace with Russell Salvatore
12:14PM 23 at any point, correct?

12:14PM 24 A. Not -- I don't -- not -- not that was exhibited as in
12:14PM 25 evidence here.

12:14PM 1 Q. And did you, as part of your review of Mr. Gerace's
12:14PM 2 phone, review contacts between Mr. Gerace and Mr. Salvatore?

12:14PM 3 A. I don't recall any, but I -- I don't recall any.

12:14PM 4 Q. You had Mr. Gerace's phone, correct?

12:14PM 5 A. I did.

12:14PM 6 Q. There was a search conducted of that phone, correct?

12:14PM 7 A. Correct.

12:14PM 8 Q. The jury saw contacts that came out of that phone,
12:14PM 9 correct?

12:14PM 10 A. Correct.

12:14PM 11 Q. And you don't recall reviewing any contacts between
12:14PM 12 Mr. Salvatore and Mr. Gerace?

12:14PM 13 A. Not as I sit here right now. It's possible.

12:14PM 14 Q. On redirect, you talked about other contacts out of that
12:15PM 15 phone including contacts that Mr. Gerace had with individuals
12:15PM 16 in addition to those that were admitted into evidence during
12:15PM 17 your direct, right?

12:15PM 18 A. Yes.

12:15PM 19 Q. Some of the names included Anthony Gerace, right?

12:15PM 20 A. Correct.

12:15PM 21 Q. Sue Michalski, correct?

12:15PM 22 A. Correct.

12:15PM 23 Q. Lou Selva, correct?

12:15PM 24 A. Correct.

12:15PM 25 Q. Trooper Vishion, correct?

12:15PM 1 A. Yes.

12:15PM 2 Q. None of those conversations are in evidence and before
12:15PM 3 this jury, correct?

12:15PM 4 A. That is correct.

12:15PM 5 Q. Okay. And when you reviewed those conversations, there
12:15PM 6 was no discussions of any drug transactions, correct?

12:15PM 7 A. Correct.

12:15PM 8 Q. There was no discussions of commercial sex acts, correct?

12:15PM 9 A. Correct.

12:15PM 10 Q. And in fact, nowhere in any of the other discussions
12:15PM 11 reviewed in that phone were there discussions of drug
12:15PM 12 transactions, correct?

12:15PM 13 A. Correct.

12:15PM 14 Q. And no discussions of commercial sex acts, correct?

12:15PM 15 A. Again, as I -- I mean, the Michalski ones, I feel have a
12:15PM 16 nexus to that.

12:15PM 17 Q. You have an opinion about the ones that are in front of
12:15PM 18 the jury, right?

12:16PM 19 A. I do.

12:16PM 20 Q. In terms of all the other contacts that are in that
12:16PM 21 phone, anything you recall that the jury didn't see in terms
12:16PM 22 of commercial sex acts?

12:16PM 23 A. Not that I recall.

12:16PM 24 Q. You talked about a couple of undercover operations, one
12:16PM 25 in 2016 to '17, and one in 2018, correct?

12:16PM 1 A. I did.

12:16PM 2 Q. Okay. And you talked about -- you were asked questions
12:16PM 3 about the one in 2016 and '17 and a particular officer that
12:16PM 4 was involved was referenced during the redirect, correct?

12:16PM 5 A. He was.

12:16PM 6 Q. And Investigator Frank Vitko was the case agent, correct?

12:16PM 7 A. Yeah, I think he was a supervisor. Catuzza was the
12:16PM 8 undercover.

12:16PM 9 Q. Okay. You said that that was -- was stopped at some
12:16PM 10 point because there was some sort of mixup or conflict where
12:16PM 11 the Cheektowaga Police Department ran a plate, and that was a
12:16PM 12 reason for discontinuing the investigation?

12:16PM 13 **MR. TRIPI:** Objection as to mixup.

12:16PM 14 **MR. FOTI:** I don't know --

12:16PM 15 **MR. TRIPI:** Mischaracterizes the testimony.

12:16PM 16 **THE COURT:** Overruled.

12:16PM 17 **THE WITNESS:** I'm sorry, can you repeat the question?

12:16PM 18 **BY MR. FOTI:**

12:16PM 19 Q. The investigation apparently comes to an end at some
12:17PM 20 point because a plate is run or something by the Cheektowaga
12:17PM 21 Police Department?

12:17PM 22 A. Yeah, I didn't get the impression that was the -- I think
12:17PM 23 it was a number of factors, not just that.

12:17PM 24 Q. Well, yeah, that was one that you testified to on
12:17PM 25 redirect, right?

12:17PM 1 A. Correct.

12:17PM 2 Q. One of the other factors is there was multiple attempts
12:17PM 3 to do undercover purchases, correct?

12:17PM 4 A. Trying to remember the conversation with Mr. Catuzza.

12:17PM 5 Q. You did talk about the fact that there was one successful
12:17PM 6 undercover purchase involving Ms. K.A., correct?

12:17PM 7 A. Right. I thought that there was another, maybe,
12:17PM 8 marijuana one. But I could be conflating --

12:17PM 9 Q. You might be thinking about Mr. Santos.

12:17PM 10 A. I'm sorry? I may be conflating --

12:17PM 11 Q. Yeah. In terms of the 2016 to 2017, there was an attempt
12:17PM 12 to make an undercover purchase in March 6th of 2015, correct?

12:17PM 13 A. I -- I would need the records, but I have no reason to
12:17PM 14 disagree with you.

12:17PM 15 Q. And another attempt that -- you would not disagree there
12:17PM 16 was also another attempt on April 30th of 2015, correct?

12:17PM 17 A. That sounds right. It's been a while since I looked at
12:17PM 18 that file.

12:17PM 19 Q. That's okay. What you would agree with is there was
12:18PM 20 multiple attempts not involving Ms. K.A. at Pharaoh's where
12:18PM 21 there was a failure to be able to have an undercover
12:18PM 22 purchase, correct?

12:18PM 23 A. I would agree with that.

12:18PM 24 Q. And ultimately, they call off that investigation?

12:18PM 25 A. Correct.

12:18PM 1 Q. Okay. And then you talked about the more recent attempts
12:18PM 2 in 2018 involving Mr. Santos, correct?

12:18PM 3 A. Correct.

12:18PM 4 Q. And I think there was some success at getting, like, some
12:18PM 5 marijuana at some point?

12:18PM 6 A. Correct.

12:18PM 7 Q. But the attempt was to see if he could get cocaine,
12:18PM 8 correct?

12:18PM 9 A. That was the ultimate goal of that.

12:18PM 10 Q. And I think the -- the question on redirect was he
12:18PM 11 expressed that he was, his belief, that he was unable to
12:18PM 12 purchase cocaine because he's not a known commodity, correct?

12:18PM 13 A. Correct.

12:18PM 14 Q. Okay. And the takeaway from that is he was unable to
12:18PM 15 purchase cocaine, correct?

12:18PM 16 A. He was unable to purchase cocaine.

12:18PM 17 Q. He made multiple attempts, right?

12:18PM 18 A. I think he went in there two or three times, maybe.

12:18PM 19 Q. And unable to purchase cocaine each time he went in,
12:18PM 20 correct?

12:18PM 21 A. He did have conversations about it, but was unable to.

12:18PM 22 Q. Had conversations, and was unable to purchase cocaine,
12:18PM 23 right?

12:19PM 24 A. That's correct.

12:19PM 25 Q. There was a question about wiretaps and a reference to

12:19PM 1 Judge Michalski being involved in -- as a judge back in 2016,
12:19PM 2 2017, that was overseeing certain requests by law
12:19PM 3 enforcement; is that right? Something about --
12:19PM 4 A. No, that related to the undercover operation. There
12:19PM 5 was -- and, again, I don't -- I -- I -- I know the document,
12:19PM 6 but I would need to see it to be specific, but there was I
12:19PM 7 think a request made to the Court not to disclose part of the
12:19PM 8 undercover, I think, related to K.A. Because if you charge
12:19PM 9 someone, they have an obligation to turn over evidence, but
12:19PM 10 sometimes you can get permission to pull back some of that
12:19PM 11 evidence.

12:19PM 12 I think that's what that documented related to. But
12:19PM 13 Judge Michalski was the individual that it was presented to.
12:19PM 14 And Mr. Catuzza obviously didn't have any idea about the
12:19PM 15 relationship.

12:19PM 16 Q. Ms. K.A., when she was ultimately charged, she was
12:19PM 17 charged with three undercover transactions involving drugs,
12:19PM 18 correct?

12:20PM 19 A. Correct.

12:20PM 20 Q. Not four that she was actually involved in, correct?

12:20PM 21 A. Yeah. I'd have to look at the indictment, but I think it
12:20PM 22 was three.

12:20PM 23 Q. She wasn't charged with the undercover purchase at
12:20PM 24 Pharaoh's, correct?

12:20PM 25 A. I think it was considered as, like, relevant conduct, but

12:20PM 1 it wasn't in the indictment I don't believe.

12:20PM 2 Q. Okay. And in terms of just sort of circling back on the
12:20PM 3 issue of wiretaps, if you, as an FBI special agent, were to
12:20PM 4 seek a wiretap, and I think you already said you're not
12:20PM 5 really familiar with State procedures, correct?

12:20PM 6 A. Correct.

12:20PM 7 Q. Judge Michalski is a State judge, correct?

12:20PM 8 A. He is.

12:20PM 9 Q. If you were to put an application in for authorization,
12:20PM 10 you would be going to a federal magistrate?

12:20PM 11 A. Federal wiretap, yes.

12:20PM 12 Q. And Judge Michalski would have nothing to do with that,
12:20PM 13 correct?

12:20PM 14 A. Correct.

12:20PM 15 **MR. FOTI:** May I just have a moment, Judge?

12:20PM 16 Nothing further, Judge.

12:21PM 17 **THE COURT:** Anything more, Mr. Tripi?

12:21PM 18 **MR. TRIPI:** No, thank you, Judge.

12:21PM 19 **THE COURT:** Okay. You may step down, sir. Thank you
12:21PM 20 very much.

12:21PM 21 **THE WITNESS:** Thank you.

12:21PM 22 (Witness excused at 12:21 p.m.)

12:21PM 23 (Excerpt concluded at 12:21 p.m.)

12:21PM 24 * * * * *

12:21PM 25

1
2 **CERTIFICATE OF REPORTER**
3

4 In accordance with 28, U.S.C., 753(b), I
5 certify that these original notes are a true and correct
6 record of proceedings in the United States District Court for
7 the Western District of New York on December 18, 2024.
8

9 s/ Ann M. Sawyer
10 Ann M. Sawyer, FCRR, RPR, CRR
11 Official Court Reporter
12 U.S.D.C., W.D.N.Y.
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